CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO, PETITIONER,

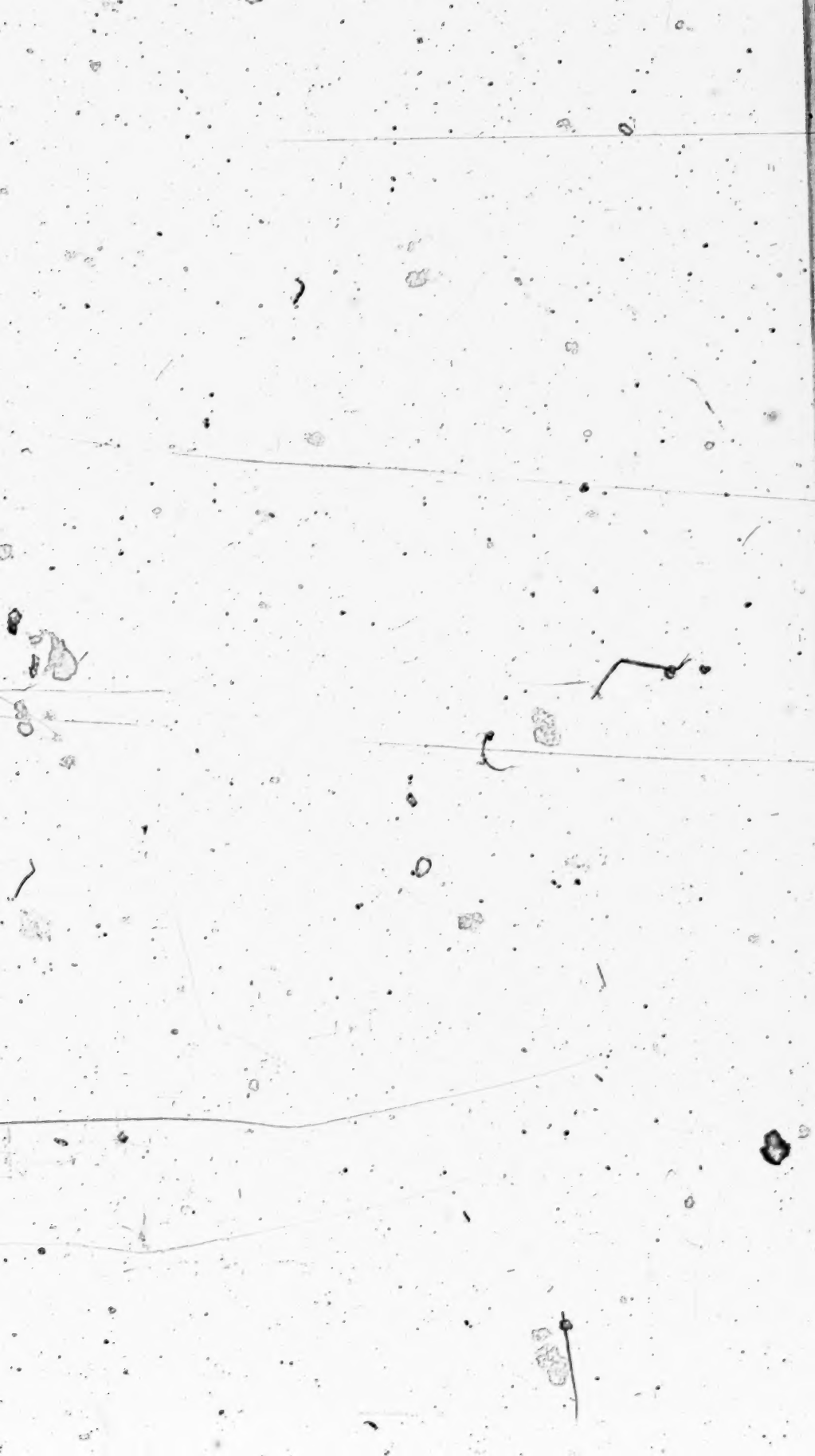
vs.

RUBERT HERMANOS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 11, 1939.

CERTIORARI GRANTED JANUARY 29, 1940.



UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3417.

RUBERT HERMANOS, Inc.,

DEFENDANT, APPELLANT,

v.

THE PEOPLE OF PUERTO RICO,

PLAINTIFF, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM JUDGMENT, JULY 30, 1938.

TRANSCRIPT OF RECORD.

HENRI BROWN,
JAIME SIFRE, Jr.,
for Appellant.

WILLIAM CATTRON RIGBY,
B. FERNANDEZ GARCIA, Attorney General, Puerto Rico,
MIGUEL GUERRA-MANDRAGON,
RAFAEL RIVERA ZAYAS,
NATHAN R. MARGOLD, Solicitor for
Department of the Interior,
for Appellee.

BOSTON:
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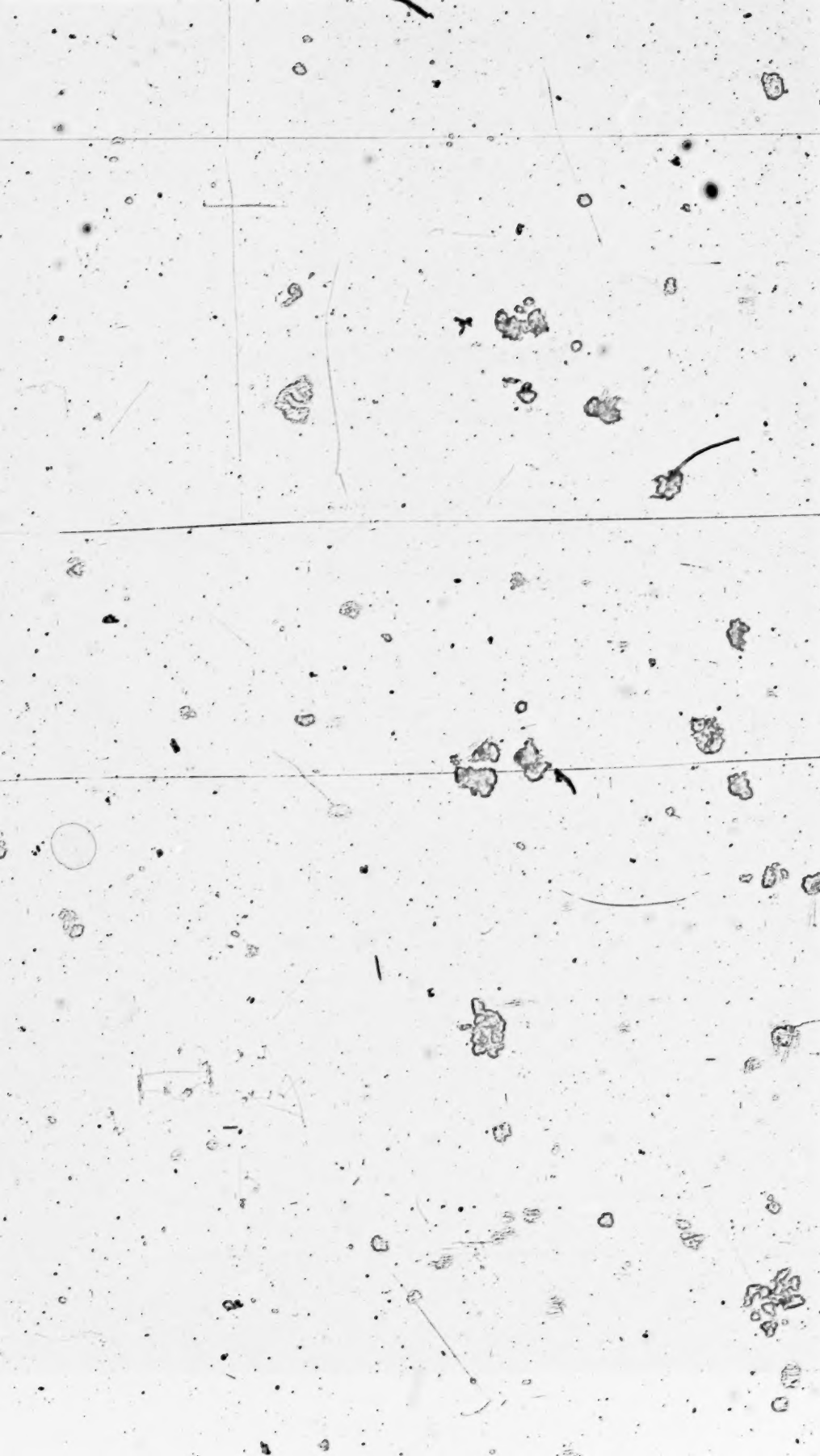
1939.



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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3417.

RUBERT HERMANOS, INC.,
DEFENDANT, APPELLANT,

v.

THE PEOPLE OF PUERTO RICO,
PLAINTIFF, APPELLEE.

TRANSCRIPT OF RECORD.

[FILED IN CIRCUIT COURT OF APPEALS JANUARY 25, 1939.]

IN THE SUPREME COURT OF PUERTO RICO.

No. 2, QUO WARRANTO.

THE PEOPLE OF PUERTO RICO, EX REL. BENIGNO FERNANDEZ GARCIA, ATTORNEY GENERAL OF PUERTO RICO.

MOTION FOR LEAVE TO FILE A COMPLAINT.

Now comes before this Honorable Court the Attorney General of Puerto Rico and respectfully moves for leave to file a complaint of *quo warranto* against Rubert Hermanos, Inc., which is a company with franchises and powers of a domestic corporation of Puerto Rico and requests that the prayer of the said complaint be granted.

BENIGNO FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

Filed in open Court, January 28, 1936, at 2 P. M.

B. MARRERO RIOS,
Acting Secretary.

IN THE SUPREME COURT OF PUERTO RICO.

No. 2. Quo Warranto.

The People of Puerto Rico, Petitioner,

v.

Rubert Hermanos, Inc., Respondent.

COMPLAINT.

Now comes The People of Puerto Rico, through its attorney general, Benigno Fernandez Garcia, and respectfully alleges that Rubert Hermanos, Inc., respondent herein, a corporation organized and operating under the laws of Puerto Rico, is no longer entitled to its franchises and privileges for the following reasons, to wit:

(a) Said corporation, Rubert Hermanos, Inc., was organized under the laws of Puerto Rico on April 21, 1927, and its articles of incorporation were filed in the office of the Executive Secretary of Puerto Rico on April 27 of the same year. A certified copy of the articles of incorporation of the defendant company, marked "Exhibit A", is attached to the present complaint and forms part thereof.

(b) The aims or purposes sought by the said domestic corporation in organizing itself and which were authorized by the approval of its articles of incorporation are, among others, as follows: to exploit agriculture in general; to acquire, develop and manage undertakings having for their object the planting, cultivation and harvesting of sugar cane; to plant, cultivate and harvest sugar cane plantations, thus working the lands in its possession, a d to purchase and hold farms and plantations.

(c) Subdivision (f) of section 4 of the aforesaid articles of incorporation provides, however, that the right of the aforesaid corporation to hold and control land in the Island of Puerto Rico is restricted to 500 acres only, such restriction being expressly described in conformity with the restrictions established in section 3 of the Joint Resolution of the Congress of the United States of America, approved May 1, 1900 (Joint Resolution No. 23, 56th Congress, First Session, 31 Statutes at Large 716, Code of the United States, Title 48, Section 752).

(d) The aforesaid domestic corporation was thus authorized to engage in agriculture, was restricted by its articles of incorporation to own and control not more than 500 acres, and was warned by said articles of incorporation that the aforesaid restriction was imposed by law. Yet, notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752), said corporation owns and controls at present in full ownership, and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane. The aforesaid estates are described in the enclosed certificates marked "Exhibits B and C" and made part of this complaint.

(e) The total area of farming land which the defendant corporation now owns and controls and which, as already stated, it applies to agriculture, covers some 12,188 acres.

(f) The holding and control by the defendant of land forming large estates, as hereinbefore alleged, is contrary to the public policy long established and frequently declared of The People of Puerto Rico and is clearly in conflict with the economic well being of The People of Puerto Rico.

(1) The public policy of The People of Puerto Rico against the holding and control of land in large estates by organized companies representing accumulations of capital as was first enunciated by Joint Resolution No. 23 of the 56th Congress, First Session approved May 1, 1900 (31 Statutes at Large 716, Code of the United States, Title 48, Section 752) has been frequently reiterated and strengthened by administrative authorities of The People of Puerto Rico, specifically including (and this does not limit the above general principles) House Bill No. 13, Second Special Session of the 13th Legislature, June 26, 1935 (approved by the House of Representatives); substitute Senate Bill for House Bill No. 13, Second Special Session of the 13th Legislature (approved by both Houses of the Legislature and vetoed by the Governor because in his opinion it was not sufficient to meet the policy therein declared); Act No. 33 of the 13th Legisla-

ture, Second Special Session, approved July 22, 1935; Act No. 47, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 48, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 44, 13th Legislature, Second Special Session, and the Senate Resolution of February 13, 1935.

(2) The total area of Puerto Rico is only some 3,435 square miles, that is, some 2,198,400 acres, of which only 1,222,284 are fit for cultivation. The population of Puerto Rico in 1930 was 1,543,913 inhabitants and according to conservative estimates the present population amounts to 1,700,000, giving an average of 494.9 persons per square mile. This shows an increase of population from 325.5 persons per square mile in 1910 to 378.4 in 1920, and to 449.5 in 1930. Of this population, 72.3 percent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence.

(3) Out of the aforesaid 1,222,284 acres of land fit for cultivation, some 251,000 acres, or something over one fifth, are applied to the production of sugar. Of such land thus applied to the production of sugar, not less than 196,737 acres, or something over 72 percent, which is above 16 percent of the total area fit for cultivation, is owned or controlled by organized companies representing aggregate capital belonging almost exclusively to absent stockholders. Normally, the sugar output is 67 percent of the agricultural wealth of Puerto Rico. The organized companies above referred to produce, normally, 59 percent of the total output of sugar in the Island, thus controlling almost 40 percent of the total agricultural wealth. During the decade from 1920 to 1930 the total area of the estates in Puerto Rico, managed by their owners decreased by 318,232 acres and the area of estates managed by directors increased by some 325,425 acres. The total farming area covers approximately 1,979,474 acres, and thus almost one sixth of the total farming area has been transformed from estates managed by their owners to farms worked by directors during a single decade.

Therefore, The People of Puerto Rico, through its aforesaid attor-

ney general, prays this Honorable Court to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises.

THE PEOPLE OF PUERTO RICO,
by BENIGNO FERNANDEZ GARCIA,
Attorney General.

EXHIBIT A.

THE PEOPLE OF PUERTO RICO
Office of the Executive Secretary.

Know All Men by These Presents:

That in accordance with a request of the Hon. the Attorney General of Puerto Rico, and for official use, I. C. Gallardo, Executive Secretary of Puerto Rico, Do Hereby Certify: That the attached eleven typewritten sheets are a true and correct copy of the articles of incorporation of "Rubert Hermanos, Incorporada," the original of which articles of incorporation was on the twenty-seventh day of April, nineteen hundred and twenty-seven, filed in this office, in which it is now of record.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-second day of November, A. D., nineteen hundred and thirty-five.

C. GALLARDO,
Executive Secretary.

(Great Seal of Puerto Rico is affixed.)
Issued for Official Use. No fees collected.

ARTICLES OF INCORPORATION OF RUBERT HERMANOS, INC.

The undersigned, Luis Rubert, Manuel Gonzalez, Gabriel Soler and Jose Anatarriaga, in full possession of our civil rights, want hereby to make it known that we have agreed among ourselves to consfitute and organize a corporation under the provisions of the

act entitled "Law of Private Corporations," approved March 9, 1911, as amended, all according to the bases set forth in the following sections:

Section 1.—The corporation shall be entitled: "Rubert Hermanos, Inc."

Section 2.—The main office of the corporation shall be located at No. 7 Tetuan street, in the city of San Juan, Island of Puerto Rico, and the right is reserved to open other offices and branches both in San Juan and in any other locality in the Island and abroad.

Section 3.—The corporation is established with no time limit, that is, permanently.

Section 4.—The aims and purpose for which this corporation is organized are those hereinafter set forth in the same manner and to the same extent as any that might be undertaken by natural persons, to wit:

(a) To engage in the Island of Puerto Rico or elsewhere in the manufacture of sugar, molasses and any other by-products from sugar.

(b) To purchase, sell and generally to trade in sugar, either refined or raw sugar, in molasses and other by-products of sugar. To manufacture, purchase, sell, import, export and generally to trade, wholesale and retail, in every kind of articles, goods and produce, and in connection therewith, to establish, keep, own and manage shops, warehouses and in general all kinds of installations and establishments, provided that it is done in connection with or incidental to any of the purposes for which the corporation is organized.

(c) To build up, purchase, own, lease or in any other way acquire, encourage, promote, organize, handle, conduct, and manage undertakings whose purpose and object is the planting, cultivation and harvesting of sugar cane and the manufacture and sale of sugar, refined as well as raw, molasses and other by-products of sugar, to construct, purchase, own or in any other way to acquire centrals, mills, establishments and manufacturers with every kind of buildings, installations, annexes, accessories and implements necessary or proper for the manufacture of sugar, molasses and other by-products of sugar. To engage in sugar refining and for this purpose

to build up, purchase, own; lease or in any way to acquire, handle, work and operate sugar refineries, mills or any other kind of factories with all their accessories, buildings, annexes and implements necessary or proper for the purpose.

(d) To raise, develop, purchase, own and sell cattle, sheep and horses. To engage in agriculture in general. To plant, cultivate and harvest sugar crops, working in that way or in any other way deemed suitable by the use of fertilizers and irrigation, either directly or through tenants or *colonos*, the land belonging to the corporation; to purchase, sell or in any other way to trade in sugar cane; to manufacture said product and to contract with outsiders and *colonos*, entering with the latter into any contracts that it might consider advantageous, with or without crop-financing, said manufacturing extending to include not only the manufacture of sugar whether muscovado, centrifugal or refined, and molasses, but also any other agricultural, industrial or commercial manufacturing, or to building and transportation not requiring the exercise of the right of eminent domain, provided such extension of the manufacturing process is made in connection with or incidental to the purposes for which the corporation has been organized, with the acquisition and application, in every case, of the materials, effects, machinery and other means of working and manufacturing that might be necessary, provided by modern progress and affording the best advantages, and it can build or aid, provided it is in connection with the aims and purposes of the corporation, in the building and working of bridges, tanks, dykes, dams, aqueducts, ditches, irrigation systems, pipes, sites for water pumps, and to acquire, install and operate mills, factories, centrals, refineries, dwelling houses, stores, warehouses, workshops, depots, wharves, docks, bridges, boats and steamers and sail vessels, roads, railroads, locomotives and motorcars.

(e) To manufacture, purchase, sell, lease and use articles, produce, utensiles, machinery, implements and apparatus in general and to trade in them, provided it becomes necessary or convenient for the corporation in carrying out any of such purposes, and incidental to or in connection with any of them.

(f) To purchase, lease, own, or, in any other way, to acquire, sell,

exchange and convey, or in any other way to dispose of real property or rights, estates and plantations located within or without the Island of Puerto Rico as far as reasonably necessary in order to be able to carry on the aims and purposes for which the corporation has been constituted and organized; provided, however, that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America.

(g) In connection with its business to advance and lend money to farmers and *colonos* to aid them in the sowing, cultivation and harvesting of sugar cane or for other purposes and to accept any security that might be approved by the Board of Directors of the corporation.

(h) To construct, purchase, own, lease or, in any other way, to acquire, keep, enlarge, extend, work and manage for its own and private ends of the corporation, warehouses, wharves, landing stages, bridges and piers, and to dredge and render navigable the waters adjoining the said warehouses, wharves, landing stages, bridges and piers, all in accordance with the provisions in force at the time in regard to the matter.

(i) To purchase or manufacture for the corporation's own purposes steam, electric, and hydraulic power; to construct, keep, operate and exploit sidings, switches, branches, railways, locomotives, engines, cars, wagons, carriages, motor launches, barges, motorcars or any other means of transportation, but solely and exclusively for the purpose of transporting or handling the products, materials, goods, provisions and articles of the corporation to be used in connection with its business.

To purchase, build, manufacture, lease, or in any other way to acquire and work, handle and operate, wagons, cars, motors, trucks, motorcars and vehicles of any kind and description for the transportation of sugar cane, and of all the products, goods, provisions and articles to be transported by the corporation in connection with its business and to use the motor power that might be needed by the corporation and to install and maintain such permanent and portable

tracks and other utensiles and implements as might be necessary or useful.

None of the contents herein shall be construed as giving to the corporation any of the rights, powers or prerogatives of a Public Service corporation, nor as granting to it the right to engage in activities not accorded by the law to Private Corporations in the Island of Puerto Rico under which the same is organized and constituted.

(j) To purchase, lease, build or, in any other way, to acquire, manage or keep houses, hotels, dwellings, establishments or structures of any kind for the housing of the employees of the corporation including their families, or for the housing of other persons, provided that is necessary in connection with any of the purposes of the corporation.

Section 5.—In accordance with the law under which this corporation is organized it shall have powers within and without the Island of Puerto Rico to carry out its purposes and in addition thereto it shall have the following:

(k) To appear as plaintiff or defendant in court and to prosecute before a court or administrative office any matter concerning the corporation.

(l) To have and use its own seal and to alter or change the same whenever it thinks fit to do so.

(11) To purchase, sell, exchange, and otherwise to acquire or convey rights, credits, franchises, grants of all kinds, options, patents, trade marks, inventions, and any other kind of property, fixing the expenses, price, mode of payment and instalments, entering into agreements; to borrow money with or without security; to exercise the right of bidding and of redemption; to order, accept, constitute, acknowledge, qualify, consent, modify, cancel, subrogate, postpone, waive, assign and substitute mortgages or pledges of any kind, annuities and servitudes upon all kinds of property, securities and rights, as well as any other lien; to ask for and accept water rights regarding springs, rivers, lakes, bays, bodies of water, intakes, their respective beds, banks, meadows, lumber, wood, quarries, mines, and any other kinds of property and rights, and to enter concerning the same into all kinds of agreements and contracts, to make compromises; to accept

with or without the right of deliberation and with or without the benefit of inventory and repudiate and renounce inheritances, legacies, gifts or any other gratuitous acquisition; to intervene in testamentary and intestate proceedings in the capacity of heirs, legatees, creditors, and in any other capacity to produce, approve, or challenge inventories, appraisals, liquidations, partitions and allotments of property; ratify, approve, rescind, annul and cancel all kinds of deeds and contracts; to agree to extensions and novations; to make compromises in matters concerning its rights where doubts and differences arise, and to execute, without any other restrictions than those imposed by law and by the present articles of incorporation, all such acts and agreements concerning its own property as may be executed by any natural person in full possession of his civil rights.

(m) To manage, promote, improve and work for agricultural industrial and commercial purposes every property and rights in any way belonging to it; to make, renew or withdraw any investment of cash or securities; to render, receive or adjust accounts; to draw, accept, secure, endorse; or in any other way to negotiate or protest, for want of acceptance or payment, drafts, notes, securities, bills of lading and any other kind of papers; to claim, liquidate or collect credits; to evict lessees or tenants; to be present in all kinds of meetings and to vote, approving or rejecting any resolution adopted therein; to partition common property; to make surveys, descriptions and lists of properties.

(n) To register, purchase, lease, and otherwise to acquire, hold, own, use, promote, and to sell, assign, convey and otherwise dispose of any trade marks, formulas, processes, secrets and all kinds of inventions, improvements and processes used in connection with or acquired under patents granted by the United States and other countries in connection with or used in the business in which this corporation is engaged and to perform any of its aims and purposes; to use and grant licenses in connection thereof and otherwise to make profits out of said patented trade marks, grants, processes, or out of any property, rights and improvements thus acquired and for the purpose of working and developing the same; to engage in any business whether industrial or otherwise congruent with said aims,

save those businesses that are not allowed by the aforesaid Law of Private Corporations.

(n) To acquire the property, goodwill and rights, and to take charge entirely or partially of the business, with assets and liabilities, of any person, firm or corporation engaged in a business similar to the one which this corporation is authorized to carry on, and to pay for the same in cash or with properties, or with shares or bonds, or any other securities of the corporation or in other way; but nothing herein stated shall be construed as authorizing this corporation to engage in any business not allowed by the Law of Private Corporations or by the Articles of Incorporation.

(o) Subject to the provisions and limitations of the law, to purchase, receive, keep, hold and otherwise acquire the shares, bonds, notes, credits, certificates of indebtedness, contracts or other obligations of any sort and nature of any person, association or corporation domestic or foreign or of any State, country, nation, or government, and to issue in exchange its own shares, bonds, or other obligations, or to pay in cash or in some other way, to retain them as an investment or in some other way; to use, assign negotiate, or in some other way to dispose of such shares, bonds, credits, mortgages, certificates of indebtedness, contracts or other obligations; to keep, receive, and dispose of the interest, dividends, or income from such bonds, notes, mortgages, credits, certificates of indebtedness, contracts, and other obligations, and in general to avail itself of all the rights, powers and privileges of ownership.

(p) To borrow money, raise funds for any of the purposes of the corporation and to issue bonds, notes, drafts, certificates of indebtedness and other obligations secured by mortgages in the shape of deeds of trust or in any other way, or secured by pledge or by any other security or lien, upon all or part of its property real or personal, rights, privileges and franchises of the corporation irrespective of their location, whether acquired or to be acquired, and to sell, pledge, discount, and in any other way to dispose of such bonds, notes, drafts, certificates of indebtedness and other obligations; to secure the payments of bonds, certificates of indebtedness, notes and other obligations from any person, firm, association or

corporation, or dividends from shares and other securities of such entities, and to enter into any agreement or to issue any security in connection therewith, provided the same are approved by the Board of Directors.

(q) To make contracts, agreements or settlements of whatever name, kind or nature in furtherance of the purposes of the corporation, with the government or public authorities of the United States, of the Island of Puerto Rico or of any other state, territory, or dependency, or with any foreign state, possession, or government, or with any other public or private association or with any natural or juridical person.

(r) To register the corporation in any Territory or Dependency of the United States or in any foreign country and to take all the necessary and adequate steps to obtain and secure for the corporation as far as possible the same rights and privileges enjoyed in such States, Territories or Dependencies of the United States or in any foreign country by their domestic or local corporations, associations, or individuals; to acquire, own, mortgage, or convey real and personal property; to open, keep and establish branches, establishments and places of business and to carry on any part of its business in any of the said States, Territories, Dependencies and foreign countries as far as allowed by their laws.

(s) To do in general anything that might be necessary, proper and adequate for attaining any of the aims or carrying out any of the purposes or exercise any of the prerogatives and purposes here stated, either independently or jointly with other corporate entities, firms, or individuals, and to take all those steps and to do all those things incidental to or in connection with, or that might derive from the business of this corporation, or that might be useful or suitable for furthering the aims for which it is organized, provided, of course, that the same are not in violation of the law.

Section 6.—The total amount of the authorized capital of the corporation is Four Million Dollars ($4,000,000) dividend into Four Thousand (4,000) common shares with a par value of One Thousand Dollars ($1,000) each.

Each share shall entitle its owner to one vote in all regular and special stockholders' meetings.

Section 7.—The management of all the business of the corporation shall be in the hands of the Board of Directors who may, in conformity with legal requisites, with the provisions of the present charter and with the by-laws of the corporation, execute all such acts as are within its powers and shall consist of nine members as a maximum in the capacity of permanent directors and of four other directors as substitutes who shall be summoned whenever a quorum can not be had with the former.

The directors shall be empowered to make, alter or repeal the by-laws of the corporation but such by-laws so made or altered may be amended, altered or repealed by the stockholders, but they must first be authorized by a regular stockholders' meeting in order to sell, convey, encumber, or transfer real property of the corporation; it being provided that the Board of Directors may by itself, in a regular or special meeting and without it being necessary to have authority from the stockholders, encumber the crops of the corporation and the products from such crops and generally all the sugar and molasses which by any reason might belong or be due to the corporation for legitimate purposes of the same.

Section 8.—Dividends shall be declared in the manner and at the time decided upon by the Board of Directors and the corporation may retain such part of its earnings or profits or the whole thereof as in their discretion the Directors might consider most advantageous for the interest of the Corporation.

Section 9.—The names of its incorporators, with the post office address of each of them and the number of shares subscribed and paid up by each of them, whose total shall be the capital with which the corporation shall start business, are stated below as follows:

Name	Address	No. of shares Subscribed	Amount paid up
Luis Rubert	San Juan, P.R.	5 (five)	Five Thousand Dollars
Manuel Gonzalez	Salinas, P.R.	5 (five)	Five Thousand "
Gabriel Solor	San Juan, P.R.	5 (five)	Five Thousand "
Jose Anatarriaga	Vega Baja, P.R.	5 (five)	Five Thousand "

In Witness Whereof we subscribe the above Articles of Incorporation on this 21st day of April, 1927, in the City of San Juan, Puerto Rico.

LUIS RUBERT
MANUEL GONZALEZ
JOSE ANATARRIAGA
GABRIEL SOLER.

The People of Puerto Rico
Municipality of San Juan ss.

Know all men by these presents that on the 21st day of April, 1927, in the city of San Juan, Puerto Rico, personally appeared before me, in my capacity as Notary Public, Luis Rubert, Manuel Gonzalez, Gabriel Soler and Jose Anatarriaga, who are all of them of age, property owners, and who reside the first and the third in San Juan, P. R.; the second in Salinas, P. R.; and the last in Vega Baga, P. R., who are personally known to me, and each and everyone of them acknowledged to have signed the foregoing Articles of Incorporation for the aims and purposes therein stated.

Affidavit No. 399.

JAIME SIFRE, JR.,
Notary Public.

EXHIBIT B.

DEPARTMENT OF JUSTICE OF PUERTO RICO
Registry of Property San Juan, Second Section.

I, Emigdio S. Ginorio, Registrar of Property of San Juan, Puerto Rico, Second Section, and its territorial district, Do Hereby Certify:

That the following properties are recorded in this district in the name of Rubert Hermanos, Inc.:

VEGA ALTA.

NUMBER ONE:

RURAL, piece of property located in the ward of Sabana of Vega Alta with an area of 76.6 6 *cuerdas*, equivalent to thirty hectares, three ares and twenty-six centiares. It is bounded on the North by Rubert Hermanos, Emilio Perez Alonso and Hacienda Carmen, be-

longing to the corporation Carmen Centrale; on the South by Heirs of Alberto de Santiago and Hacienda Carmen; on the East Alberto Santiago; and on the West Carmen Centrale, Saturnino Canales now Emilio Perez Alonso, Gabriela Oquendo now Rubert Hermanos.

Recorded on the back of folio 234 of Vol. 12 of Vega Alta, property No. 311 triplicate, eleventh entry. It is encumbered by a $7,000 mortgage in favor of the Federal Land Bank of Baltimore.

NUMBER TWO:

RURAL, piece of property situated in the ward of Sabana of Vega Alta, consisting of 4.10 *cuerdas,* equivalent to one hectare, sixty-one ares and thirty centiares. It is bounded on the North by San Vicente Central, with a public road between; on the east by San Vicente Central; on the South by San Vicente Central, and on the west by San Vicente Central and Arturo Guerra.

Recorded on the back of page 242 of Vega Alta, property No. 519, third entry, and is encumbered by a mortgage in favor of the Federal Land Bank for $7,000.

NUMBER THREE:

RURAL, parcel of land consisting of 5.57 *cuerdas,* in the ward of Sabana of Vega Alta, equivalent to 2 hectares, 19 ares and 11 centiares, bounded on the North by the highway and by Arturo Guerra; on the East by San Vicente Central belonging to Rubert Hermanos; on the South by San Vicente Central, and on the West by Arturo Guerra and San Vicente Central.

Recorded on the back of folio 246, Vol. 11 of Vega Alta, property No. 520, 3rd entry, and is encumbered by a $7,000 mortgage in favor of the Federal Land Bank of Baltimore.

NUMBER FOUR:

RURAL, parcel of land known as Sabana & Cerro Gordo, lying in the ward of Sabana of Vega Alta, consisting of 562 *cuerdas,* third class land, equivalent to 220 hectares, 88 ares and 84 centiares, bounded on the North by the sea; on the East by Heirs of Pablo Ubarri; on the South by Hacienda San Vicente, and on the West Armando Lopez Lendron (now Cesar Espanol).

Recorded on the back of folio 243, Vol. 12 of Vega Alta, property

No. 185 fifth, 14th entry. It is encumbered by a $5,000 mortgage in favor of Encarnacion Aboy de Cintron; by a servitude of railway right-of-way on it as a servient tenement and in favor of an estate of 201 cuerdas belonging to the partnership Rubert Hermanos; by an attachment for $2,027 in favor of Jose C. Umpierre.

NUMBER FIVE:

RURAL, Hacienda known as "Central Vicente", consisting of the estates named San Vicente, Monte Frio, Monte Grande and Lizas, Ingenio and Pastillo, Carmelita and Blandito, situated in the wards of Cabo Caribe, Ceiba, Yeguada, Algarrobo and Pugnado of Vega Baja; Punto Blanco, Sabana and Cerro Gordo of Vega Olta; Sabana Seca of Toa Baja; and Cambalache and Santa Ana of Arecibo, with a total area of 10,476.75 *cuerdas,* equivalent to 4,120 hectares, 47 ares and 12 centiares, made up of the following parcels: Parcel No. 1: RURAL, known as Central San Vicente, situated in the wards of Cabo Caribe, Punto Blanco, Cerro Gordo, Ceiba, Sabana, Yeguada and Algarrobo, in the municipal districts of Vega Baja and Vega Alta, with an area of 5,396.29 *cuerdas,* equivalent to 2,120 hectares, 95 ares and 25 centiares, bounded on the North by land formerly belonging to Francisco Martey, then to Mr. Yoakan and now to Buena Vista Industrial Company, by Arturo Guerra & Bros., the sea (Atlantic Ocean), Eduardo Gimenez and Heirs of Trinidad Garcia, by Heirs of J. Jimenez, lying between it and another estate belonging to Rubert Bros., several small landowners, by F. G. J. Waymouth now Eloy Hernandez and by Mr. Moore; on the South, by Francisco Jimenez Mena, Heirs of E. Lomba, Carmen Central, the San Juan road, Guillermo Perez, Catalina Rosello de Gorbea, Sibuco creek, Heirs of Sterlich now Carmen Central, Felipe Santiago, several small landowners, Mr. Moore and Heirs of J. Jimenez; on the east, by Eduardo Jimenez and Heirs of Trinidad Garcia, several landowners, Felipe Santiago, the Concepcion minors, Mr. Moore, Lorenzo Concepcion, Carmen Central, F. G. I. Waymouth, now Eloy Hernandez, and Carmen Central, and Heirs of Livingston; and on the West, by Isidoro Rosario, Porto Rico Plantation Company, Arturo Guerra & Bros., the sea (Atlantic Ocean), the Sibuco Creek, Heirs of Gorbea, several small landowners, Eduardo Jimenez and Heirs of Trinidad Garcia. The

parcel within Vega Baja is described as follows: RURAL, with an area of 4,447.64 *cuerdas,* equivalent to 1,748 hectares, 9 ares and 57 centiares, situated in the following wards: Cabo Caribe, Ceiba, Yeguada and Algarrobo of Vega Baja, and bounded as follows: on the North, by Buena Vista Industrial Company, Arturo Guerra & Bros., and the Atlantic Ocean; on the South, by Francisco Jimenez Mena, the San Juan-Vega Baja road, Guillermo Perez, Catalina Rodriguez de Gorbea, the Sibuco Creek, Heirs of Sterlich and Carmen Central; on the West, by Isidoro Rosario, Porto Rico Plantation Company, Arturo Guerra & Bros., and the Atlantic Ocean; and on the East by the portion of this same parcel lying within the municipal district of Vega Alta and described as follows: RURAL, with an area of 948.65 *cuerdas,* situated in the wards of Punto Blanco, Sabana and Cerro Gordo of Vega Alta, equivalent to 372 hectares, 85 ares and 57 centiares, bounded as follows: on the North by the Atlantic Ocean, F. G. I. Waymouth now Eloy Hernandez and Mr. Moore; on the South Carmen Central and Mr. Moore; on the East F. G. I. Waym ow Eloy Hernandez, Carmen Central and Mr. Moore; on the West, the portion of this same parcel lying in Vega Baja. In this parcel there is a sugar mill with all the apparatus, modern machinery and all other implements and contrivances required by this kind of industry and a railway for the use of the mill. There is a concrete bridge over the Cibuco creek with its locks, dams and concrete ditch; another bridge built of steel and wood over the said creek, located down stream from the dam for the use of the said waters, as stated in the grant and besides; a steel structure with a twenty ton crane where the mills are installed and four furnaces with eight boilers, 260 feet long by 64 feet wide; another steel building containing the evaporating pans, centrifugal filters, crystalizers and other apparatus. It is 132 feet long by 145 feet wide; another steel building for storing sugar, 145 feet long by 74 feet wide with an equipment for loading wagons. Another concrete building 100 feet long by 32 feet wide, with steel beams and roof; where the filters, presses, decanters, pumps, and other apparatus are installed; another frame and galvanized iron building for the "quadruple-effect", 60 feet long by 30 feet wide; another concrete building 100 feet long by 24 feet wide to store empty sacks,

acids and other effects; a concrete and galvanized iron building 98 feet long by 84 feet wide, as a warehouse for effects and replacement parts; another frame and galvanized iron building 80 feet long by 80 feet wide, used for storing ties, for a repair shop with a furnace for bronze melting; a two-story frame and galvanized iron building, the ground floor of which is being used as a carpentry shop and the upper floor with twelve rooms for living quarters; another building for carrying and unloading sugar cane; another one-story frame and galvanized iron building for housing the mechanic; another frame and galvanized iron building for the engineer; another frame and galvanized iron building for housing the chief chemist; another frame and galvanized iron building to be used as a hotel and for housing employees; another frame and galvanized iron building for housing the assistant manager; another frame and galvanized iron building used as a railway station, another frame and galvanized iron building containing a platform scale having a railroad track one meter wide, an office and a store room; another frame and galvanized iron building for housing scales with a railroad track 75 centimeters gage; another frame and galvanized iron structure for a kitchen; another two-story frame and galvanized iron structure, with masonry, as living quarters for the manager; another frame and galvanized iron structure used as a stable for horses; another frame and galvanized iron building, 90 feet long by 35 feet wide, used for storing locomotives and as a repair shop for the same; another frame and galvanized iron building for a blacksmith shop; another frame and galvanized iron building; another frame and galvanized iron building used as a factory and containing the installation of the old machines; another frame and galvanized iron building used as living quarters; another frame and galvanized iron building and several small houses for housing laborers.

Recorded on folio 194, vol. 13, Vega Alta, property No. 611, 1st record. It is encumbered as regards the parcel called Blandito by a $50,000 mortgage in favor of the Banco Territorial y Agricola of Puerto Rico and by a mention of another $50,000 mortgage in favor of Belen and Rosa Cruz Guerra y Andino. The five parcels are moreover answerable for the liabilities of the firm Rubert Bros., and the

whole estate as described is security for a mortgage in favor of the holder or holders of promissory notes amunting to $1,997,017 as principal.

VEGA BAJA.

NUMBER SIX:

RURAL. Parcel of land situated in the ward of Ceiba of Vega Baja and measuring two *cuerdas*, equivalent to 78 ares and 61 centiares. It is bounded, on the North, South and West by the main property from which it is segregated, belonging to Honorio Giorgia Rodon, and on the East by land belonging to San Vicente Central of Rubert Bros.

This parcel is recorded in the name of the agricultural partnership Rubert Bros. on folio 228, vol. 25, Vega Baja, property No. 1134, 1st record. It is encumbered by reason of its origin by a $1,000 mortgage in favor of the Federal Land Bank of Baltimore or of the holder of a promissory note.

NUMBER SEVEN:

RURAL. Parcel of land lying in the ward of Ceiba of the municipal district of Vega Baja, with an area of 64.98 *cuerdas*, equivalent to 25 hectares, 53 ares and 96 centiares. It is bounded on the North by Rubert Bros., on the South by the Cibuco creek and road No. 2; on the East by the road between this parcel and land belonging to the Heirs of Gorbea; and on the West by Rubert Bros. and the Cibuco creek. There is on it a two-story frame house with brick roof, a masonry stairway and the kitchen is roofed with tiles.

It is recorded in the registry in the name of Rubert Bros. Inc., on folio 189, Volume 23, Vega Baja, property No. 739 duplicate, 16th record. The same is leased to the agricultural partnership Rubert Bros.

NUMBER EIGHT:

RURAL. Parcel of land lying in the ward of Puerto Nuevo, formerly called Yeguada, municipal district of Vega Baja, measuring 8 meters wide by 74.05 meters long, or 196 square meters, or 0.15 *cuerdas*, equivalent to 5 ares and 96 centiares. There is at present on it a railway track of the corporation Rubert Bros. Inc. It is

bounded on the North by what is left of the main estate belonging to Carlos Valle Diaz; on the East by a local road leading to Puerto Nuevo; on the South by a local road leading to the lagoon; and on the West by the Buenavista Plantation Company.

It is recorded on folio 222, Vol. 26, Vega Baja, property No. 1180, first record. It is affected by reason of its origin to the mention of a servitude of right of way in favor of San Vicente Central and to a notice of an action instituted by Rubert Hermanos, Inc., against Carlos Valle Diaz.

NUMBER NINE:

RURAL. Parcel of land lying in Puerto Nuevo *barrio*, municipal district of Vega Baja. Its measurements are 8 meters wide by 49.04 meters long, or 475.02 square meters, equivalent to 0.12 *cuerdas*, equivalent to 4 ares, 75 centiares. There is at present on it a railway track of the corporation Rubert Hermanos, Inc. It is bounded on the North and East by the main estate and also by Carlos Valle; on the South by Quintin and Carlos Valle; and on the West by Quintin Valle.

It is recorded on folio 227, Vol. 26, Vega Baja, property No. 1181, first record and is affected by reason of its origin by a mention of servitude of right of way in favor of San Vicente Central of Rubert Bros. and further by notice of an action instituted by Rubert Hermanos, Inc., against Carlos Valle Diaz.

NUMBER TEN:

RURAL. Parcel of land in the ward of Yeguada, Vega Baja, with an area of 19.19 *cuerdas*, equivalent to 7 hectares, 54 ares and 24 centiares. It is bounded on the North by Basilisa Delgado Garcia; on the South by a track of Rubert Hnos.; on the East by Quintin Valle; and on the West by Basilisa Delgado Garcia. It is recorded on the back of folio 96, Vol. 19, Vega Baja, property No. 840, fourth record.

This parcel is leased to Rubert Hnos., and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos and by the mention of another lease in favor of E. Cano and Company.

NUMBER ELEVEN:

RURAL. Parcel of land lying in the ward of Yeguada, Vega Beja. It consists of 13.71 *cuerdas* and is bounded: on the North by Juan Francisco Collazo; on the South by Pedro Grull; on the East by Maria Agripina de Leon and Fabian C. Tacoronte; and on the West by Calixto de Leon.

It is recorded on folio 73, Vol. 12, Vega Baja, property No. 592, third record. It is free from encumbrances.

NUMBER TWELVE:

RURAL. Parcel of land lying in the ward of Yeguada, Vega Baja. It consists of 13.71 *cuerdas*, and is bounded: on the North by Juan Francisco Collazo; on the South by Pedro Grull; on the East by Maria Francisca de Leon Casanovas; and on the West by Bonifacio de Leon Casanovas.

It is recorded on the back of folio 76, Vol. 12, Vega Baja, property No. 593, second record, and is free from encumbrances.

NUMBER THIRTEEN:

RURAL. Parcel of land which measures 219.80 meters long by 4.50 meters wide on either side of the center of the track, that is a total width of 9 meters resulting in an area of 1,978.20 square meters, equivalent to 19 ares and 78.02 centiares or 0.50 of a *cuerda*. It is bounded: on the North by the property from which it is segregated which belongs to Jose Valle; on the East by the road leading from Vega Baja to Puerto Nuevo; on the South by the local road leading to the Lagoon which divides it from the Buenavista Plantation Company; on the West by Genaro Cepeda, that is, by the strip of land occupied by the track of the San Vicente Central, on a section across the estate of Jose Valle Diaz.

It is recorded on folio 6, Vol. 27, Vega Baja, property No. 1189, first record. It is encumbered by reason of its origin by a servitude of right of way in favor of the San Vicente Central.

NUMBER FOURTEEN:

RURAL. Parcel of land lying in the ward of Yeguada, Vega Baja, consisting of 13.43 *cuerdas*, equivalent to 5 hectares, 29 ares, and 40 centiares. It is bounded: on the North by Candelaria Cano

Delgado; on the South by Altagracia Cano Delgado; on the East by Basilisa Delgado Garcia; and on the West by the Heirs of Juan Francisco Collazo.

It is recorded on the back of folio 67, Vol. 19, Vega Baja, property No. 833, second record, it is leased by reason of its origin to the partnership Rubert Hermanos and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos.

NUMBER FIFTEEN:

RURAL. Parcel of land in the ward of Yeguada of Vega Baja, consisting of 13.43 *cuerdas*, equivalent to 5 hectares, 29 ares, and 40 centiares. It is bounded: on the North by Juana Cano Delgado; on the South by Ramona Cano Delgado; on the East by Basilisa Delgado Garcia; and on the West by Heirs of Juan Francisco Collazo.

It is recorded on the back of folio 33, Vol. 19, Vega Baja, property No. 832, second record. It is leased by reason of its origin to Rubert Hermanos and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hnos.

NUMBER SIXTEEN:

RURAL. Parcel of land lying in the ward of Yeguada, Vega Baja, consisting of 13.43 *cuerdas*, equivalent to 5 hectares, 29 ares and 40 centiares. It is bounded: on the North by Ramona Cano Delgado; on the South by Angela Cano Delgado; on the East by Basilisa Delgado Garcia; and on the West by Heirs of Juan Francisco Collazo.

It is recorded on folio 74, Vol. 19, Vega Baja, property No. 834, 7th record. It is leased to Rubert Hnos. and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos and by $1,500.00 mortgage to Pilar Lizargarate Enatarreaga.

NUMBER SEVENTEEN:

RURAL. Parcel of land lying in the ward of Yeguada, Vega Baja, consisting of 13.43 *cuerdas* equivalent to 5 hectares, 29 ares, and 40 centiares. It is bounded: on the north by Altagracia Cano Delgado; on the south by Diana Cano Delgado; on the east by Basilisa Delgado Garcia; and on the west by Heirs of Juan Francisco Collazo.

It is recorded on folio 76, Vol. 19, Vega Baja, property No. 835,

fourth record. It is leased to Rubert Hnos. and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos and by a $1,500.00 mortgage to Pilar Lizargarate Enaterreaga.

NUMBER EIGHTEEN:

RURAL: Parcel of land lying in the ward of Yeguada, Vega Baja, consisting of 6.715 *cuerdas,* equivalent to 2 hectares, 72 ares, 23 centiares and 14 miliares. It is bounded: on the north by Angela Cano; on the south by Eduardo Cano; on the east by Basilisa Delgado; and on the west by Heirs of Juan Francisco Collazo.

It is recorded on folio 81, Vol. 19, Vega Baja, property No. 836, sixth record. It is leased to Rubert Hnos. and is encumbered by a servitude of right of way in favor of San Vicente Central and by a $750.00 mortgage to Pilar Lizargarate Enaterreaga.

NUMBER NINETEEN:

RURAL. Parcel of land lying in the ward of Yeguada, Vega Baja, consisting of 13.43 *cuerdas,* equivalent to 5 hectares, 29 ares and 40 centiares. It is bounded: on the North by Juliana Cano Delgado; on the South by Bernardo de Leon and Heirs of Ramon de Leon; on the East by Basilisa Delgado Garcia; on the West by Heirs of Ramon de Leon and by Heirs of Juan Francisco Collazo.

It is recorded on the back of folio 85, Vol. 19, Vega Baja, property No. 837, eighth record. It is leased to Rubert Hnos. and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos and by $1,000.00 mortgage to Jose Enatarreaga Berazaruce and by another $1,500.00 mortgage to Pilar Lizargarate Enatarreaga.

NUMBER TWENTY:

RURAL. Parcel of land in the ward of Yeguada of Vega Baja, consisting of 19.19 *cuerdas,* equivalent to 7 hectares, 54 ares, and 24 centiares. It is bounded: on the North by Eduardo Cano Delgado; on the South by Bernado de Leon; on the East by Basilisa Delgado Garcia; and on the West by Heirs of Ramon de Leon.

It is recorded on folio 88, Vol. 19, Vega Baja, property No. 838, third record. It is leased to Rubert Hnos. and is encumbered by a

servitude of right of way in favor of San Vicente Central of Rubert Hermanos.

NUMBER TWENTY-ONE:

RURAL. Parcel of land lying in the ward of Yeguada of Vega Baja, consisting of 13.43 *cuerdas*, equivalent to 5 hectares, 19 ares and 40 centiares. It is bounded: on the North by the maritime zone on the North coast; on the South by Juana Cano Delgado; on the East by Basilisa Delgado Garcia; and on the West by Juan Francisco Collazo.

It is recorded on folio 56, Vol. 19, Vega Baja, property No. 830, third record. It is leased to Rubert Hnos. and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos.

NUMBER TWENTY-TWO:

RURAL. Parcel of land in the ward of Yeguada of Vega Baja, consisting of 100.15 *cuerdas*, equivalent to 39 hectares, 36 ares 28 centiares and 56 miliares. It is bounded: on the North by the maritime zone; on the East by Vicente Vega, Evaristo Aviles, Manuel Maizonet, Eduvigis Vazquez, Eduardo Cano, Ramon Cano and by a lagoon; on the South by Francisco Casanovas; and on the West by Bernardo de Leon, Eduardo Cano, Ricardo Gonzalez, Angela and Altagracia Carmona, and Ramona, Candelaria, Juan and Magina Cano.

It is recorded on folio 53, Vol. 19, Vega Baja, property No. 829, fifth record. It is encumbered by a temporary servitude right of way in favor of San Vicente Central, is leased to Eduardo Cano and Company, and has a mortgage on it for $16,000.00 in favor of Basilisa Delgado de Cano.

NUMBER TWENTY-THREE:

RURAL. Parcel of land lying in the ward of Yeguada, now Puerto Nuevo, of Vega Baja, consisting of 41.60 *cuerdas*, equivalent to 16 hectares, 34 ares and 93 centiares. It is bounded: on the East by Buenavista Industrial Co.; on the North by Rubert Hermanos, Inc., on the South by Pedro Grull and Buenavista Industrial Co.; and on the West by Bernardo de Leon and Rubert Hnos., Inc.

It is recorded on folio 137, Vol. 19, Vega Baja, property No. 847, sixth record. It is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos and by a $4,500.00 mortgage in favor of the Federal Land Bank of Baltimore.

NUMBER TWENTY-FOUR:

RURAL. Parcel of land lying in the ward of Yeguada, consisting of 13.43 *cuerdas*, equivalent to 5 hectares, 29 ares and 40 centiares. It is bounded: on the North by Francisco Casanovas; on the South by Candelaria Cano Delgado; on the East by Basilisa Delgado Garcia; and on the West by Heirs of Juan Francisco Collazo.

It is recorded on folio 3, Vol. 26, Vega Baja, property No. 831, duplicate, sixth record. It is leased to Rubert Hermanos and is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos, by an attachment for $563.00 in favor of Ernesto Fernando Schluter and by another attachment for $4,000.00 in favor of Pedro Casanovas Marrero.

NUMBER TWENTY-FIVE:

RURAL. Parcel of land known as "Los Colericos", lying in the ward of Algarrobo, municipal district of Vega Baja, consisting of 57 *cuerdas*, equivalent to 22 hectares, 40 ares and 32 centiares. It is bounded: on the North by Ramon Arias; on the South by Sucesores de Sobrino & Cia. on the other side of the railroad track, and by Obdulia Diaz de Venegas, also on the other side of the railroad track; on the East by Heirs of Manuel Nater, that is, his widow Ines Madera; and on the West by Ramon Perez Fernandez.

It is recorded on folio 160, Vol. 27, Vega Baja, property No. 348 duplicate, eighth record. It is encumbered by a promissory note for $3,975.00 in favor of Dolores P. de Portela, Jose Manuel, Consuelo and Amparo Portela Perez.

NUMBER TWENTY-SIX:

RURAL. Parcel of land lying in the ward of Yeguada of Vega Baja, consisting of 450 *cuerdas*, with a frame house thereon, straw thatched. It is bounded: on the East by Trinidad Padilla, Aniçeta Nevarez Felix Molina, Eugenio Santos; on the West by Jose Gonzalez Alayon, Heirs of Antonio Tirado and the Tortuguero Lagoon;

on the North by Trinidad Padilla, Fabian Cano Tacoronte, Ramon de Leon, Galo Mejias, Miguel Gomez, Jose Gonzalez Alayon, Juan Rivera, Domingo Ruiz; and on the South by Felicita Sanchez, Bartolo Santos, Aniceta Nevares, Manuel Reyes, Heirs of Antonio Tirado and Pedro Gomez.

It is recorded on the back of folio 100, Vol. 20, Vega Baja, property No. 377 triplicate, eighth record. It is encumbered by a railway servitude in favor of an estate belonging to Rubert Hermanos.

NUMBER TWENTY-SEVEN:

RURAL. Parcel of land lying in the ward of Puerto Nuevo, formerly Yeguada of Vega Baja, consisting of 22.37 *cuerdas*, equivalent to 8 hectares, 79 ares and 34 centiares. It is bounded: on the North by Juan Maisonet, Dolores Maisonet, Vicente Vega, Valentina Ayala, Eduviges Vazquez and Pastor Maisonet; on the South by Basilisa Delgado, Ramon Cano, now Rubert Hermanos, Inc.; on the West by Rubert Hermanos, Inc.; and on the East by the Buenavista Industrial Company.

It is recorded on folio 79, Vol. 28, Vega Baja, property No. 1250, first record. It is encumbered by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos. It is leased to Eduardo Cano and Company, and has a mortgage thereon for $4,500.00 in favor of the Federal Land Bank of Baltimore.

NUMBER TWENTY-EIGHT:

RURAL. Plantation known as San Vicente Central made up of the estates called San Vicente, Monte Frio, Monte Grande, Lizas, Ingenio, Pastillo, Carmelita and Blandito, lying in the Wards of Cabo Caribe, Ceiba, Yeguada, Algarrobo and Pugnado of Vega Baja; Punta Blanco, Sabana and Cerro Gordo of Vega Alta; Sabana Seca of Toa Baja; and Cambalache and Santa Ana of Arecibo, with a total area of 10,476.75 *cuerdas*, equivalent to 4,120 hectares, 47 ares and 12 centiares. It consists of the following groups: group No. 1, estate known as San Vicente Central lying in the wards of Cabo Caribe, Punto Blanco, Cerro Gordo, Ceiba, Sabana, Yeguada and Algarrobo of Vega Baja and Vega Alta, with an area of 5,396.29 *cuerdas*, equivalent to 2,120 hectares, 95 ares and 25 centiares, bounded as follows: on the North

by land belonging first to Francisco Mattey, then to Mr. Yoakan and now to Buenavista Industrial Company, by Arturo Guerra y Hermanos, the sea (Atlantic Ocean), Eduardo Gimenez, Heirs of Trinidad Garcia, Heirs of J. Jimenez, whose land lies between Rubert Hermanos and several small landowners, F. G. I. Waymouth now Eloy Hernandez, and Mr. Moore; on the South by Francisco Jimenez Mena, Heirs of E. Lomba, Carmen Central, the San Juan road, Guillermo Perez, Catalina Rosello, Cibuco creek, Heirs of Sterlich now Carmen Central, Felipe Santiago, several small landowners, Mr. Moore, and Heirs of J. Jimenez; on the East by Eduardo Jimenez, Heirs of Trinidad Garcia, several small landowners, Felipe Santiago, the Concepcion minors, Mr. Moore, Lorenzo Concepcion, Carmen Central, F. G. I. Waymouth now Eloy Hernandez, Carmen Central and Heirs of Livingston; and on the West by Isidoro Rosario, Porto Rico Plantation Company, Arturo Guerra y Hermanos, the sea (Atlantic Ocean), the Cibuco creek, Heirs of Gorbea, several small landowners, Eduardo Gimenez and Heirs of Trinidad Garcia. It includes a factory for the manufacture of sugar, with every modern apparatus and machinery and other implements and railway equipment, a concrete bridge over the Cibuco creek, a dam with locks and sluices; another steel and wooden bridge over the same creek, located downstream from the dam for collecting and using the said waters, under a grant; and the following buildings: A steel structure, with a twenty-ton crane, where the mills, with four furnaces and eight boilers are installed and measuring 260 feet long by 64 wide; another steel structure housing the taches, centrifugal filters, crystalizers and other apparatus, with an area of 132 ft. by 145 ft.; another steel building for the storage of sugar which measures 145 ft. long by 74 ft. wide, with a wagon loading apparatus; another masonry building 100 ft. long by 32 ft. wide, with steel beams and galvanized iron roof, with filters, presses, decanters, pumps, scummers and other apparatus; another frame building with galvanized iron roof for the quadruple-effect tache, measuring 60 ft. long by 30 ft. wide; another masonry building 100 ft. long by 24 ft. wide for the storage of empty sacks, acids and other effects; another masonry and galvanized iron building 98 ft. long by 84 ft. wide used as a general warehouse for effects and

extra parts; another two-story masonry building for a laboratory and for housing the chemists; another galvanized iron and wooden structure 80 ft. long by 80 ft. wide for storing sleepers and used as a repair shop and bronze smelter; another two-story frame and galvanized iron building with a carpenter shop on the ground floor and the upper floor used as a dwelling house divided into twelve rooms; another building for carrying and unloading canes; another one-story frame building used for housing mechanics, another frame and galvanized iron building for the engineer; another frame and galvanized iron building for housing the sugar expert; another frame and galvanized iron building used as a hotel and living quarters of employees; another frame and galvanized iron building for housing the assistant manager; another frame and galvanized iron building used as a railway station; another frame and galvanized iron building for housing the platform scale, with a track one meter wide, with a desk and storeroom; another frame and galvanized iron building for a platform scale with a track 75 centimeters wide and for a storeroom; another frame and galvanized iron structure for a kitchen for laborers; a two-story building, the upper floor of wood with galvanized iron roof and the ground floor of masonry for housing the manager; another frame building the galvanized iron roof for a stable; another frame and galvanized iron building 90 feet long by 35 feet wide used for housing locomotives and a shop for repairing the same; another frame and galvanized iron building for a blacksmith-shop; another frame and galvanized iron building used as a factory where the old machinery used is housed; another frame and galvanized iron building as a dwelling house and several small houses for resident laborers. The portion of this estate located in Vega Baja has an area of 4,447.64 *cuerdas*, equivalent to 1748 hectares, 9 ares and 57 centiares, bounded as follows: on the North by Buenavista Industrial Company, Arturo Guerra y Hermanos, and the Atlantic Ocean; on the South by Francisco Jimenez Mena, the Vega Baja road, Guillermo Perez, Catalina Rodriguez, the Cibuco Creek, Heirs of Sterlick and Carmen Central; on the West by Isidoro Rosario, Porto Rico Plantation Company, Arturo Guerra y Hermanos, the Atlantic Ocean, the Cibuco Creek, Heirs of Gorbea; and on the

East by the portion lying in Vega Alta with an area of 948.65 *cuerdas*, equivalent to 372 hectares, 85 ares and 57 centiares, bounded as follows: on the North by the Atlantic Ocean, T. G. I. Waymouth now Eloy Hernandez, Mr. Hoare; on the South by the Carmen Central and Mr. Moore; on the East by T. G. I. Waymouth now Eloy Hernandez, the Carmen Central, and Mr. Moore; on the West by the portion lying within the municipality of Vega Baja. The portion of the group lying within the municipality of Vega Baja is recorded on folio 59, Vol. 22, of said town, property No. 947, second record, and the portion lying within the municipality of Vega Alta, on folio 201, Vol. 10 of the same town, property No. 465, second record.

Group No. 2: A parcel of land known as Montefrio, in the ward of Pugnado of Vega Baja with an area of 147.63 *cuerdas*, bounded as follows: on the North and East by Ramon Perez; on the South by Jose Lopez and Ramon Perez, and on the West by Juan Rosello. This parcel is recorded on folio 62, Vol. 8 of Vega Baja, property No. 281, sixth record.

Group No. 3: A estate known as Montegrande y Lizas, in the Cambalache and Santa Ana barrios of Arecibo, with an area of 1,765.71 *cuerdas*, with buildings which are mentioned in the instrument presented. It is recorded on folio 207, Volume 133 of Arecibo, property No. 5980, second record.

Group No. 4: A estate known as Ingenio and Pastillo in the ward of Sabana Seca in the Pastillo section of Toa Baja, with an area of 2,132.18 *cuerdas*, bounded as follows: on the North by the Monserrate Plantation, now Finlay Brothers and Waymouth Trading Company separating the Cocal waterway from the El Toa creek, Manuel Perez and Francisco Canino; on the South by Rosa Echevestre now Compania Azucarera del Toa, Jose R. Davila now Heirs of Davila, Manuel Perez and Francisco Canino, the last two estates being separated by the Campanilla waterway; on the East by Heirs of Romero Cantero now Palo Seco Fruit Company, Jose R. Davila now Heirs of Davila, Heirs of Calixto Romero now Josefa Obrador, Paulino Van Syckle now Josefa Obrador, Carmen Gonzalez now Domingo Gimenez and the Pena waterway as far as the month of El Toa

creek, Manuel Perez and Francisco Canino; on the West by Heirs of Eustaquio Ortiz, separating the San Pedro waterway, Heirs of Saldana, Heirs of Isabel Sampayo and Heirs of J. B. Marrero, separating the Rincon Chico waterway, the Hermanitas de los Pobres' home, now Compania Azucarera del Toa, separating the Campanillas waterway, Manuel Perez and Francisco Canino. This estate includes the following: a frame dwelling house; another two-story dwelling house, the ground floor built of bricks and the upper floor of wood, both of old construction; a two-story frame building for housing employees; a stable with concrete floor and a cistern; a single story frame building for housing the overseer; a one-story frame building for housing employees; two sheds for housing laborers and another cistern for supplying water to the dwelling houses; a drainage ditch 50 feet wide across the estate formerly known as Monserrate Plantation, with a concrete bridge which is also used by those travelling along the Palo Seco local road, with locks for emptying the waters of this plantation into the Atlantic Ocean. This group is recorded on folio 3, Vol. 15 of Toa Baja, property No. 577, second record.

Group No. 5: Carmelita Plantation, with a house, in the ward of Ceiba of Vega Baja, with an area of 127.09 *cuerdas*, made up of two parcels; a 43.50 *cuerdas* of flat land, bounded: on the East by Manuel Quinones, on the South and West by the Ceiba Plantation which formerly belonged to Vicente Lopez, and on the North by the same Ceiba Plantation and by Francisco Alonso, and another parcel with an area of 83.59 *cuerdas* of both flat and hilly ground, bounded as follows: on the North by the old Fe Plantation; on the West by the Ceiba Plantation belonging to Manuel Quinones, and by Francisco Alonso; on the South by the Monserrate Plantation belonging to Jorge Finlay; and on the East by Bautista Aguayo, Brigido Serrano now Gervacio Pantojo. This group is recorded on folio 3, Vol. 10 of Vega Baja, property No. 340, eighth record.

Group No. 6: Parcel of land known as Blandito, in the place of that name of the ward of Cabo Caribe of Vega Baja, with an area of 900 *cuerdas*, equivalent to 353 hectares, 73 ares and 60 centiares, of which 215 *cuerdas* are mangroves. It is bounded on the

West by the Yeguada waterway, now Francisco Matey; on the South by the Encarnacion Plantation now Rubert Hermanos; on the North by the Santa Ines Plantation now Francisco Gimenez and Francisco Matey, and on the East by the Colorado waterway now Rubert Hermanos.

It is recorded on folio 181, Vol. 30 of Vega Baja, property No. 1347, first record. It is encumbered by a mention of mortgage for $50,000 in favor of Belen and Rosa Cruz Güerra y Andino; and by a mortgage in favor of the holder or holders of twenty promissory notes totaling $1,997,017 as principal.

NUMBER TWENTY-NINE:

RURAL. An estate in the ward of Yeguada of Vega Baja, consisting of 6.715 *cuerdas*, equivalent to 2 hectares, 62 ares, 23 centiares and 14 milliares, bounded: on the North by Ricardo Gonzalez; on the South by Eduardo Cano; on the East by Juan R. Collazo; and on the West by Basilisa Delgado de Cano.

It is recorded on the back of folio 69, Volume 23 of Vega Baja, property number 1016, fifth record. It is encumbered by a lease in favor of Rubert Hermanos; by a servitude of right of way in favor of San Vicente Central of Rubert Hermanos; by a $750.00 mortgage in favor of Pilar Lizargarate Enatarreaga.

NUMBER THIRTY:

RURAL. Strip of land in the ward of Puerto Nuevo (formerly Yeguada) of Vega Baja, measuring 79.62 meters long by 8 meters wide, or 1,436.96 square meters, bounded as follows: on the North by Genaro Cepeda; on the East by Rubert Hermanos Inc.; on the South by a local road leading to the Lagoon and by Genaro Cepeda; and on the West by the local road to Puerto Nuevo.

It is recorded on folio 180, Vol. 28 of Vega Baja, property No. 1267, first record and is subject to a mention of servitude of right of way in favor of San Vicente Central; it is encumbered by a servitude of right of way in favor of the said San Vicente Central, and by $450.00 mortgage in favor of Rubert Hermanos, Inc., and by a servitude of right of way across this piece of property and for the benefit of the remainder of the main estate from which it has been segregated belonging to Genaro Cepeda.

NUMBER THIRTY-ONE:

RURAL. Parcel of land lying in the ward of Cabo Caribe of Vega Baja, consisting of 55 *cuerdas* and bounded as follows: on the North by San Vicente Central owned by Guillermo and Juan Rubert; on the South by Jorge Finlay and by Heirs of Manuel Nater; on the East by the Cibuco Creek and on the West by Jose Manuel Portela. The Corporation Rubert Hermanos, Inc., has a two-sevenths joint interest in this piece of property and has the same recorded on the back of folio 125, Vol. 15 of Vega Baja, property No. 366 duplicate, ninth record.

It is answerable as far as the joint interest is concerned for the liabilities of the agricultural partnership Rubert Hermanos amounting to $931,320.70; and is encumbered by a $2,983.00 as principal in favor of the holder or holders of twenty promissory notes.

NUMBER THIRTY-TWO:

RURAL. Parcel of land in the Algarrobo *barrio* of Vega Baja, consisting of 56.50 *cuerdas*, equivalent to 22 hectares, 20 ares and 66 centiares, bounded as follows: on the North by the aforesaid agr. ultural partnership Rubert Hermanos (now Rubert Hermanos, Inc.), on the South by the Insular Road No. 2 from Vega Baja to Manati; on the East by Heirs of Ramon B. Portela (now Rubert Hermanos, Inc.) and by Jose Venegas. This boundary branches off along a strip of land belonging to the Heirs of Ramon B. Portela and forms an alley that, starting from the aforesaid Road No. 2, reaches the railroad track of the American Railroad Company of Porto Rico, which cuts in two the parcel above described. On the West by Francisco Jimenez Mena and the remainder of the main property which belongs to Dolores Perez de Portela.

It is recorded on folio 108, Vol. 29 of Vega Baja, property No. 1313, first record. It is encumbered by a $9,000.00 mortgage in favor of Dolores Perez de Portela.

NUMBER THIRTY-THREE:

RURAL. Parcel of land lying in the ward of Cibuco of Vega Baja, consisting of 21.77 *cuerdas*, equivalent to 9 hectares 51 ares and 51 centiares, bounded as follows: on the North by Jose Gorbea and

San Vicente Central; on the South by the Cibuco Creek and Carmen Central; on the East by the Carmen Central and Jose Gorbea, and on the West by San Vicente Central, Jose Gorbea and the Cibuco Creek.

It is recorded on folio 60, Vol. 24 of Vega Baja, property No. 1057, fifth record, and is encumbered by a $1,000.00 mortgage in favor of the Federal Land Bank of Baltimore.

BAYAMON.

NUMBER THIRTY-FOUR:

RURAL. Parcel of land lying in the ward of Juan Sanchez of Bayamon, with an area of 23.3645 *cuerdas*, equivalent to 9 hectares, 18 ares and 31 centiares. It is bounded: on the North by the Bayamon-Catano Road and by Heirs of Bernardo Perez; on the East by the railroad track, by Miguel Lopez Gaztambide and by the irrigation system of Bayamon; on the South by Jose Lopez Gaztambide, and on the West by Jose Lopez Gaztambide and by Eugenio Lopez Gaztambide.

It is recorded on the back of folio 59, Vol. 50 of Bayamon, property No. 2283, fifth record. It is free from any lien.

NUMBER THIRTY-FIVE:

RURAL. Parcel of land situated in the ward of Juan Sanchez of Bayamon, having an area of 23.3645 *cuerdas*, equivalent to 9 hectares, 18 ares and 31 centiares. It is bounded: on the North by the Heirs of Bernardo Perez; on the East by Eugenio Lopez Gaztambide; on the South by the Bayamon Creek, and on the West by the Bayamon River and by Francisco Lopez Gaztambide.

It is recorded on folio 55, Vol. 87 of Bayamon, property No. 2284 duplicate, seventh record. It is subject to an acknowledgment of servitude of right of way for pedestrians, horses, or carts and for watering cattle over the present roads within the former Santa Barbara Plantation, in favor of the Heirs of Miguel Lopez Gomez and of Emeranza del Pilar Gaztambide and of the children of Tulio Lopez Gaztambide.

And for delivery to the Hon. The Attorney General of Puerto Rico, for official purposes, I affix my signature to the present docu-

ment in San Juan, Puerto Rico, on this the second day of January, 1936.

EMIGDIO S. GINORIO.

(No fees)

EXHIBIT C.

DEPARTMENT OF JUSTICE OF PUERTO RICO
Registry of Property Arecibo.

I, William J. Santos, Registrar of Property of Arecibo and its territorial district, do hereby certify:

That the Corporation Rubert Hermanos Inc. has recorded to its name according to the indexes of this Registry, the following estates:

1. RURAL. Plantation known as Central San Vicente, consisting of the estates known as San Vicente, Monte Frio, Monte Grande and Lizas, Ingenio and Pastillo, Carmelita and Blandito, situated in the wards of Cabo Caribe, Ceiba, Yeguada, Algarrobo and Pugnado of Vega Baja; Punto Blanco, Sabana and Cerro Gordo of Vega Alta; Sabana Seca of Toa Baja, and Cambalache and Santana of Arecibo, with a total area of 10,476.75 *cuerdas,* equivalent to 4,120 hectares, 47 ares, and 12 centiares, made up of groups composed of pieces of property located in Vega Baja and Vega Alta, which are included within the district of another registry, and of the groups formed by the estate lying within this district and which is described as follows: Rural. Estate known as Monte Grande and Lizas lying in the wards of Cambalache and Santa Ana, municipal district of Arecibo, consisting of 1,765.71 *cuerdas,* equivalent to 693 hectares, 99 ares and 29 centiares. It is bounded as follows: on the North by Central Cambalache, Inc.; Santana Barbara Plantation belonging to Heirs of Fernando Ledesma, formerly bankrupt estate of Ulanga and Company and now Successors of Roses and Company and Heirs of Antonio Roses, the Rio Grande of Arecibo and the Tiburones waterway; on the South by Heirs of Alejo Caballero, formerly Andres Tejada and now Simon Duprey, Heirs of Felipe Agosto, formerly of Heirs of Diaz and now Simeon Duprey and Jacobo Ugarte, the former Las Claras Plantation and now Central Cambalache, Inc., and Jose R. Aponte; on the East by Heirs of Miguel Gandia now Heirs of Martin

Zabala; and on the West the Rio Grande of Arecibo and by Antonio Goicuria now Jose R. Aponte, Central Cambalache, Inc., the Arecibo-Barceloneta road, the Santa Barbara Plantation of Heirs of Antonio Roses, the Heirs of Fernando Ledesma, Successors of Roses & Company and Heirs of Antonio Roses and the Rio Grande of Arecibo.

It is encumbered by a mortgage for $1,997,0[illegible]00 in favor of the holder or holders of notes and is recorded on folio 54, Volume 162 of Arecibo, property No. 7869, first record.

2. RURAL. Plantation known as Union, formerly Lisa, lying in the ward of Santana of Arecibo, consisting of 81.19 cuerdas including a frame dwelling house with galvanized iron roof. It is bounded: on the North by the Tiburones waterway belonging to The People of Puerto Rico; on the South by the former Heirs of Lorenzo Tejada and Catalina Marin now Manuela Ero and Antonio Balseiro; on the East formerly by the above estates now Manuel Ero; and on the West formerly by Heirs of Ortiz, Manuel Rivera and Felipe Agosto now Rubert Hermanos and Felipe Agosto.

It is free from encumbrances and is recorded on folio 165, Vol. 149 of Arecibo, property No. 4822, sixth record.

And in compliance with the request of the Hon. the Attorney General of Puerto Rico, for official purposes, I issue the present document in Arecibo, P. R., on this 31st day of December, 1935.

WILLIAM S. SANTOS, *Registrar.*

(No fees)

[Title omitted.]

ORDER.

San Juan, Puerto Rico, January 28, 1936.

The foregoing complaint and the exhibits thereto attached are hereby considered as presented in open court, and let the same follow the procedure prescribed by law.

It was so ordered by the court as witness the signature of the chief justice.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO.

San Juan, Puerto Rico, January 29, 1936.

On motion of the Attorney General of Puerto Rico for leave to file a complaint in the nature of quo warranto against Rubert Hermanos, Inc., which is a company with a franchise and powers of a domestic corporation; in view of the provisions of the Act establishing quo warranto proceedings, approved March 1, 1902 (Revised Statutes and Codes of Puerto Rico, 1902, p. 305), as amended by Act No. 47, approved on August 7, 1935 (Special Session Laws of 1935, p. 530), after consideration of the complaint and of the papers attached thereto, it appearing that there is probable ground for proceeding in the premises, the motion is granted and information in accordance with the motion is hereby ordered. Let the defendant be served with copy of the complaint and of the papers attached thereto by means of a summons to be immediately issued by the clerk and returned by the marshal within ten days, a term being granted to the defendant until February 28, 1936, for demurring to or answering the complaint or for filing any other proper plea, said defendant being warned that if it fails so to do the court shall render judgment by default.

It was so ordered by the court as witness the signature of the chief justice.

EMILIO DEL TORO,
Chief Justice.

Attest: B. MARRERO RIOS, *Acting Secretary.*

[Title omitted.]

MOTION TO STRIKE OUT.

[Filed February 27, 1936.]

Now comes the respondent, Rubert Hermanos, Inc., before this honorable court, by its undersigned attorneys, and respectfully prays that the following be stricken out from the complaint herein:

1. From the initial paragraph of the complaint filed by The People of Puerto Rico against the respondent Rubert Hermanos, Inc.,

the following should be stricken out: "Is no longer entitled to its franchises and privileges for the following reasons", as this averment is a conclusion of law and, as such, is impertinent and redundant.

2. From paragraph (b) of the complaint the following words should be stricken out: "The aims or purposes sought by the said domestic corporation in organizing itself and which were authorized by the approval of its articles of incorporation are, among others, as follows: to exploit agriculture in general; to acquire, develop and manage undertakings having for their object the planting, cultivation and harvesting of sugar cane", as said averments are redundant because they repeat part of what is set forth in the articles of incorporation attached to the complaint.

From the same paragraph (b) the following words should be stricken out: "Thus working the lands in its possession, and to purchase and hold farms and plantations", as said words amount to a conclusion of law and are, moreover, argumentative.

3. From paragraph (c) of the complaint the following words should be stricken out: "Subdivision (f) of section 4 of the aforesaid articles of incorporation provides, however, that the right of the aforesaid corporation to hold and control land in the island of Puerto Rico is restricted to 500 ares only", as said averment is redundant and amounts to a repetition of what is set forth in the articles of incorporation attached to the complaint.

4. From the same paragraph (c) the following words should be stricken out: "Such restriction being expressly described in conformity with the restrictions established in section 3 of the Joint Resolution of the Congress of the United States of America, approved May 1, 1900 (Joint Resolution No. 23, 56th Congress, First Session, 31 Statutes at Large 716, Code of the United States, Title 48, Section 752)", as said averment is a conclusion of law.

5. From paragraph (d) of the complaint the following words should be stricken out: "The aforesaid domestic corporation was thus authorized to engage in agriculture", as said averment is redundant and argumentative, inasmuch as the articles of incorporation attached to the complaint set forth the authority granted to the defendant corporation.

6. From paragraph (d) the following words should also be stricken out: "Was restricted by its articles of incorporation to own and control not more than 500 acres", as said averment is redundant.

7. From said paragraph (d) the following words should be stricken out: "And was warned by said articles of incorporation that the aforesaid restriction was imposed by law", as said averment is a conclusion of law. From the same paragraph (d) the following words should also be stricken out: "Yet, notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation", as said averment is a conclusion of law and, moreover, argumentative. From paragraph (d) the following words should also be stricken out: "Owns and controls at present in full ownership", as said averment amounts to a conclusion of law. From said paragraph (d) of the complaint the following words should moreover be stricken out: "And has owned and controlled for some time several estates in excess of 500 acres", as said averment is entirely immaterial and irrelevant.

8. From paragraph (e) of the complaint the following words should be stricken out: "Now owns and controls", as said averment is a conclusion of law.

9. Paragraph (f) of the complaint and its subdivisions 1, 2 and 3, which literally copied read thus:

"(f) The holding and control by the defendant of land forming large estates, as hereinbefore alleged, is contrary to the public policy long established and frequently declared of the People of Puerto Rico and is clearly in conflict with the economic wellbeing of the People of Puerto Rico.

"(i) The public policy of the People of Puerto Rico against the holding and control of land in large estates by organized companies representing accumulations of capital as was first enunciated by Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, Code of the United States, Title 48, Section 752) has been frequently reiterated and strengthened by administrative authorities of the People of Puerto Rico, specifically including (and

this does not limit the above general principles) House Bill No. 13, Second Special Session of the 13th Legislature, June 26, 1935, (approved by the House of Representatives); substitute Senate Bill for House Bill No. 13, Second Special Session of the 13th Legislature (approved by both Houses of the Legislature and vetoed by the Governor because in his opinion it was not sufficient to meet the policy therein declared); Act No. 33, of the 13th Legislature, Second Special Session, approved July 22, 1935; Act No. 47, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 48, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 41, 13th Legislature, Second Special Session, and the Senate Resolution of February 13, 1935.

"(2) The total area of Puerto Rico is only some 3,435 square miles, that is, some 2,198,400 acres, of which only 1,222,284 are fit for cultivation. The population of Puerto Rico in 1930 was 1,543,913 inhabitants and according to conservative estimates the present population amounts to 1,700,000, giving an average of 494.9 persons per square mile. This shows an increase of population from 325.5 persons per square mile in 1910 to 378.4 in 1920, and to 449.5 in 1930. Of this population, 72.3 per cent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence.

"(3) Out of the aforesaid 1,222,284 acres of land fit for cultivation, some 251,000 acres, or something over one fifth, are applied to the production of sugar. Of such land thus applied to the production of sugar, not less than 196,737 acres, or something over 72 per cent, which is above 16 per cent of the total area fit for cultivation, is owned or controlled by organized companies representing aggregate capital belonging almost exclusively to absent stockholders. Normally, the sugar output is 67 per cent of the agricultural wealth of Puerto Rico. The organized companies above referred to produce,

normally, 59 per cent of the total output of sugar in the Island, thus controlling almost 40 per cent of the total agricultural wealth. During the decade from 1920 to 1930 the total area of the estates in Puerto Rico, managed by their owners decreased by 318,232 acres and the area of estates managed by directors increased by some 325,425 acres. The total farming area covers approximately 1,979,474 acres, and thus almost one sixth of the total farming area has been transformed from estates managed by their owners to farms worked by directors during a single decade."

Paragraph (f) above quoted, with its subdivisions, should be stricken out as immaterial and irrelevant.

Wherefore the respondent prays this honorable court that this motion to strike out be sustained in its entirety.

San Juan, Puerto Rico, February 27, 1936.

O. J. ANTONSANTI,
J. SIFRE, JR.,
Attorneys for the Respondent.

Copy served this twenty-seventh day of February, 1936.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico,
by MANUEL RODRIGUEZ RAMOS, *Secretary.*

[Title omitted.]

MINUTES OF HEARING OF MOTION TO STRIKE OUT.

San Juan, Puerto Rico, March 9, 1936, 2 P.M.

In the City of San Juan, Puerto Rico, at 2 P. M. of the day above set forth, the court being composed by Messrs. Chief Justice del Toro and Associate Justices Wolf and Hutchison.

Attorneys Benigno Fernandez Garcia, Miguel Guerra Mondragon, and Rafael Rivera Zayas appeared for the petitioner; and attorney Orlando J. Antonsanti for the respondent.

Mr. Antonsanti moved the court that attorney Horacio Franceschi be also considered as attorney of record of the respondent. Mr.

Guerra Mondragon insisted in behalf of The People that the motion to strike out presented by the respondent should be ignored by the court. In behalf of the respondent, Mr. Franceschi objected to the motion of The People. The court finally authorized the petitioner to file a brief in support of its motion, granting three days to the respondent to answer thereto and one day to the plaintiff to reply to same. After this the hearing was considered as ended.

Attest: B. MARRERO RIOS, *Acting Secretary-Reporter.*

[Title omitted.]

OPINION OF THE SUPREME COURT OF PUERTO RICO,

DELIVERED BY MR. JUSTICE WOLF.

San Juan, Puerto Rico, June 8, 1936.

This is a quo warranto proceeding presented against Rubert Hermanos, Inc. On being notified the first step of the defendant was to file a motion to strike out certain portions of the petition. On the day set for the hearing the petitioner orally requested that the motion to strike should be ignored. The theory was that the Quo Warranto Act only contemplated a pleading like an answer or a demurrer, and that there was no scope in the Quo Warranto Law for such a motion to strike, especially as the idea of the act was that the proceeding should be rapid.

We are thoroughly convinced that for this purpose a quo warranto proceeding does not differ essentially from any other suit aimed to settle an issue between the parties. A defendant is always entitled to know exactly what he should meet at the trial and to insist that he should not be called upon to disprove unnecessary averments or even scandalous or impertinent ones. Where the petitioner possibly has transcended the limits of good pleading, the defendant ought to have a right to bring him within bounds.

Sections 123 and 315 of our Code of Civil Procedure provide:

"Section 123.—All irrelevant and redundant matter in a pleading shall be stricken out by the court on motion of the opposite party, and until such motion is disposed of by the court the moving party shall not be required to plead further.

"Section 315.—Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion."

So that if these two sections are taken together the necessary idea is that an order of a court striking out redundant or other matter may be obtained by motion.

We ourselves have discussed the nature of a motion to strike in *Vargas* v. *Cruz*, 32 P.R.R. 422. We compared the motion to a special demurrer and referred to other jurisprudence.

In considering a motion to strike, especially in this type of proceeding, when the objectionable matter is only a little in excess or is harmless and would not throw a heavy burden on the defendant, the court might refuse to strike.

The motion of The People will be denied.

ADOLPH G. WOLF, *Associate Justice.*

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO.

San Juan, Puerto Rico, June 8, 1936.

For the reason stated in the foregoing opinion, the motion filed by The People of Puerto Rico in the above entitled case on March 9th of this year, is hereby overruled.

It was so ordered by the court as witness the signature of the chief justice. Messrs. Justices Cordova Davila and Travieso took no part in this ruling.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

MINUTES OF HEARING OF MOTIONS TO STRIKE OUT.

San Juan, Puerto Rico, June 19, 1936.

In the City of San Juan, Puerto Rico, at 2 P. M. of the above stated date, the court being constituted by Messrs. Chief Justic del Toro and Associate Justices Wolf, Hutchison and Travieso.

Attorneys B. Fernandez Garcia, Attorney General of Puerto Rico, Miguel Guerra Mondragon and Rafael Rivera Zayas appeared for the plaintiff; and Messrs. Jaime Sifre, Jr., and Horacio Franceschi for the respondent. The parties stipulated that the motion to strike out be submitted without oral argument and requested terms for filing briefs, which petition the court granted in the following manner: It allowed seven days to the respondent to file brief, ten days to the plaintiff to answer, and three days common to both parties to present additional briefs if they so deemed convenient.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO.

(BY THE COURT, AT THE SUGGESTION OF MR. JUSTICE TRAVIESO.)

San Juan, Puerto Rico, February 19, 1937.

Considering the motion filed by the respondent corporation, whereby it requests that certain averments of the complaint filed in this case, be stricken out, and the briefs presented by both parties in favor and against the elimination prayed for, having been examined, it is hereby decided:

1. The words "is no longer entitled to its franchises and privileges for the following reasons, to wit", appearing in the initial paragraph of the complaint, should be stricken out, as those words amount to a conclusion of law and do not constitute a statement of facts.

2. The motion is denied as to the other eliminations prayed for, as the irrelevancy that the same may contain is of no importance and can not cause prejudice or annoyance to the defendant.

3. The plaintiff is allowed a term of fifteen days to amend the complaint pursuant to the terms of this order; and the defendant a term of twenty days to file the demurrers that it may deem convenient or for answering to the amended complaint, said term to be computed from the date in which the said defendant or its attorneys are served with copy of the amended complaint.

It was so ordered by the court as witness the signature of the chief justice. Mr. Justice Cordova Davila took no part. Mr. Justice Wolf agrees with this order, except in so far as the refusal to strike out

paragraph "f" of the complaint, in whole or in part, with its subdivisions 1, 2 and 3, is concerned.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

AMENDED COMPLAINT.

[Filed February 26, 1937.]

Now comes The People of Puerto Rico, by its attorney general, Benigno Fernandez Garcia, and respectfully complains against "Rubert Hermanos, Inc.", respondent herein, a corporation organized and operating under the laws of Puerto Rico, as follows:

(a) Said corporation, Rubert Hermanos, Inc., was organized under the laws of Puerto Rico on April 21, 1927, and its articles of incorporation were filed in the office of the Executive Secretary of Puerto Rico on April 27 of the same year. A certified copy of the articles of incorporation of the defendant company, marked "Exhibit A", is attached to the present complaint as a part thereof.

(b) The aims or purposes sought by the said domestic corporation in organizing itself, which were authorized by the approval of its articles of incorporation, are, among others, as follows: To exploit agriculture in general; to acquire, develop and manage undertakings, having for their object the planting, cultivation and harvesting of sugar cane; to plant, cultivate and harvest sugar cane plantations, thus working the lands in its possession; and to purchase and hold farms and plantations.

(c) Subdivision (f) of section 4 of the aforesaid articles of incorporation provides, however, that the right of the aforesaid corporation to hold and control land in the island of Puerto Rico is restricted to 500 acres only, such restriction being expressly described in conformity with the restrictions established in section 3 of the Joint Resolution of the Congress of the United States of America, approved May 1, 1900 (Joint Resolution No. 23, 56th Congress, First Session, 31 Statutes at Large 716, Code of the United States, Title 48, Section 752).

(d) The aforesaid domestic corporation was thus authorized to engage in agriculture, was restricted by its articles of incorporation to own and control not more than 500 acres, and was warned by said articles of incorporation that the aforesaid restriction was imposed by law. Yet, notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752), said corporation owns and controls at present in full ownership, and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane. The aforesaid estates are described in the enclosed certificates marked "Exhibits B and C" and made part of this complaint.

(e) The total area of farming land which the defendant corporation now owns and controls and which, as already stated, it applies to agriculture, covers some 12,188 acres.

(f) The holding and control by the defendant of land forming large estates, as hereinbefore alleged, is contrary to the public policy long established and frequently declared of The People of Puerto Rico and is clearly in conflict with the economic wellbeing of The People of Puerto Rico.

(1) The public policy of The People of Puerto Rico against the holding and control of land in large estates by organized companies representing accumulations of capital as was first enunciated by Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, Code of the United States, Title 48, Section 752) has been frequently reiterated and strengthened by administrative authorities of The People of Puerto Rico, specifically including (and this does not limit the above general principles) House Bill No. 13, Second Special Session of the 13th Legislature, June 26, 1935, (approved by the House of Representatives); substitute Senate Bill for House Bill No. 13, Second Special Session of the 13th Legislature (approved by both Houses of the Legislature and vetoed by the Governor because in his opinion it was not sufficient to meet the policy therein declared); Act No. 33, of the 13th Legis-

lature, Second Special Session, approved July 22, 1935; Act No. 47, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 48, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 44, 13th Legislature, Second Special Session, and the Senate Resolution of February 13, 1935.

(2). The total area of Puerto Rico is only some 3,435 square miles, that is, some 2,198,400 acres, of which only 1,222,284 are fit for cultivation. The population of Puerto Rico in 1930 was 1,543,913 inhabitants and according to conservative estimates the present population amounts to 1,700,000, giving an average of 494.9 persons per square mile. This shows an increase of population from 325.5 persons per square mile in 1910 to 378.4 in 1920, and to 449.5 in 1930. Of this population, 72.3 percent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence.

(3) Out of the aforesaid 1,222,284 acres of land fit for cultivation, some 251,000 acres or something over 1/5 are applied to the production of sugar. Of such lands thus applied to the production of sugar, not less than 196,757 acres, or something over 72 percent, which is above 16 percent of the total area fit for cultivation, is owned or controlled by organized companies representing aggregate capital belonging almost exclusively to absent stockholders. Normally, the sugar output is 67 percent of the agricultural wealth of Puerto Rico. The organized companies above referred to produce, normally, 59 percent of the total output of sugar in the Island, thus controlling almost 40 percent of the total agricultural wealth. During the decade from 1920 to 1930 the total area of the estates in Puerto Rico, managed by their owners decreased by 318,232 acres and the area of estates managed by directors increased by some 325,425 acres. The total farming area covers approximately 1,979,474 acres, and thus almost one sixth of the total farming area has been transformed from estates managed by their owners to farms worked by directors during a single decade.

Therefore, The People of Puerto Rico, through its aforesaid at-

torney general, prays this honorable court to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises.

THE PEOPLE OF PUERTO RICO,
by BENIGNO FERNANDEZ GARCIA,
Attorney General.

Copy served this twenty-fourth day of February, 1937.

J. SIFRE, JR.,
Attorney for the Respondent.

[Title omitted.]

MOTION TO STRIKE FILED BY RUBERT HERMANOS, INC. ATTACKING THE AMENDED COMPLAINT.

[Filed March 16, 1937.]

Now comes Rubert Hermanos, Inc., by its undersigned attorney, and in order that it may not be understood that the respondent waives the right to request that certain words, averments and phrases contained in the amended complaint, be stricken out, said words having been attacked in the motion to strike filed against the original complaint and said motion having been overruled with regard to such words, phrases and averments, by order of February 19, 1937, entered by this Supreme Court, respectfully prays that the following be stricken out from the amended complaint herein:

1. From paragraph (b) of the amended complaint the following words should be stricken out: "The aims or purposes sought by the said domestic corporation in organizing itself and which were authorized by the approval of its articles of incorporation are, among others, as follows: To exploit agriculture in general; to acquire, develop and manage undertakings having for their object the planting, cultivation and harvesting of sugar cane", as said averments are redundant, inasmuch as they repeat part of what is set forth in the articles of incorporation attached to the complaint.

From said paragraph (b) the following words should be stricken

out: "Thus working the lands in its possession, and to purchase and hold farms and plantations", as these words amount to a conclusion of law and because they are, furthermore, argumentative.

2. From paragraph (c) of the amended complaint the following words should be stricken out: "Subdivision (f) of section 4 of the aforesaid articles of incorporation provides; however, that the right of the aforesaid corporation to hold and control lands in the Island of Puerto Rico is restricted to 500 acres only", as said averment is redundant and amounts to a repitition of what is set forth in the articles of incorporation attached to the complaint.

3. From said paragraph (c) the following words should be stricken out: "Such restriction being expressly described in conformity with the restrictions established in Section 3 of the Joint Resolutions of the Congress of the United States of America, approved May 1, 1900 (Joint Resolution No. 23, 56th Congress, First Session, 31 Statutes at Large 716, Code of the United States, title 48, section 752)", as this averment is a conclusion of law.

4. From paragraph (d) of the amended complaint the following words should be stricken out: "The aforesaid domestic corporation was thus authorized to engage in agriculture", as said averment is redundant and argumentative inasmuch as the articles of incorporation attached to the complaint set forth the authority granted to the respondent.

5. From paragraph (d) the following words should also be stricken out: "Was restricted by its articles of incorporation to own and control not more than 500 acres", as said averment is redundant.

6. From said paragraph (d) the following words should also be stricken out: "And was warned by said articles of incorporation that the aforesaid restriction was imposed by law", as said averment is a conclusion of law. From the same paragraph (d) the following words should also be stricken out: "Yet, notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation", as said averment is a conclusion of law and, moreover, argumentative. From paragraph (d) the following words should also be stricken out: "Owns and controls at present in full ownership", as said averment amounts to a conclusion of law. From

said paragraph (d) of the amended complaint the following words should moreover be stricken out: "And has owned and controlled for some time several estates in excess of 500 acres", as said averment is entirely immaterial and irrelevant.

7. From paragraph (e) of the amended complaint the following words should be stricken out: "Now owns and controls", as said averment is a conclusion of law.

8. Paragraph (f) of the amended complaint and its subdivisions 1, 2 and 3, which literally copied read thus:

"(f) The holding and control by the defendant of land forming large estates, as hereinbefore alleged, is contrary to the public policy long established and frequently declared of the People of Puerto Rico and is clearly in conflict with the economic wellbeing of the People of Puerto Rico.

"(1) The public policy of the People of Puerto Rico against the holding and control of land in large estates by organized companies representing accumulations of capital as was first enunciated by Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, Code of the United States, Title 48, section 752) has been frequently reiterated and strengthened by administrative authorities of the People of Puerto Rico, specifically including (and this does not limit the above general principles) House Bill No. 13, Second Special Session of the 13th Legislature, June 26, 1935 (approved by the House of Representatives); substitute Senate Bill for House Bill No. 13, Second Special Session of the 13th Legislature (approved by both Houses of the Legislature and vetoed by the Governor because in his opinion it was not sufficient to meet the policy therein declared); Act No. 33, of the 13th Legislature, Second Special Session, approved July 22, 1935; Act No. 47, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 48, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 44, 13th Legislature, Second Special Session, and the Senate Resolution of February 13, 1935.

"(2) The total area of Puerto Rico is only some 3,435 square

miles, that is, some 2,198,400 acres, of which only 1,222,284 are fit for cultivation. The population of Puerto Rico in 1930 was 1,543,913 inhabitants and according to conservative estimates the present population amounts to 1,700,000, giving an average of 494.9 persons per square mile. This shows an increase of population from 325.5 persons per square mile in 1910 to 378.4 in 1920, and to 449.5 in 1930. Of this population, 72.3 per cent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence.

"(3) Out of the aforesaid 1,222,284 acres of land fit for cultivation, some 251,000 acres, or something over one fifth, are applied to the production of sugar. Of such land thus applied to the production of sugar, not less than 196,737 acres, or something over 72 per cent, which is above 16 per cent of the total area fit for cultivation, is owned or controlled by organized companies representing aggregate capital belonging almost exclusively to absent stockholders. Normally, the sugar output is 67 per cent of the agricultural wealth of Puerto Rico. The organized companies above referred to produce, normally, 59 per cent of the total output of sugar in the Island, thus controlling almost 40 per cent of the total agricultural wealth. During the decade from 1920 to 1930 the total area of the estates in Puerto Rico, managed by their owners decreased by 318,232 acres and the area of estates managed by directors increased by some 325,425 acres. The total farming area covers approximately 1,979,474 acres, and thus almost one sixth of the total farming area has been transformed from estates managed by their owners to farms worked by directors during a single decade."

as being immaterial and impertinent.

Wherefore the respondent, Rubert Hermanos, Inc., respectfully

prays this court that this motion to strike be sustained in all its parts.

San Juan, Puerto Rico, March 16, 1937.

JAIME SIFRE, JR.,
Attorney for the Respondent.

Copy served this sixteenth day of March, 1937.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

[Title omitted.]

DEMURRERS TO THE AMENDED COMPLAINT.

[Filed March 16, 1937.]

Now comes Rubert Hermanos, Inc., and presents the following demurrers to the amended complaint herein:

I. *That the Supreme Court of Puerto Rico is without jurisdiction.*

(a) The Joint Resolution of the Congress of the United States of May 1, 1900, on which the complaint is based, makes an arbitrary, capricious and unconstitutional discrimination against agricultural corporations, by favoring civil partnerships and other entities which also engage in agriculture, thus violating the Fifth Amendment of the Federal Constitution, and is, consequently, null *ab initio.*

(b) The Supreme Court is without jurisdiction because this quo warranto proceeding has been brought with the object of charging the respondent—see page 3 of the amendment complaint—with an alleged violation of a law of the United States, to wit, section 3 of Joint Resolution No. 23 of the 56th Congress, First Session, approved by the Congress of the United States on May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, section 752). Jurisdiction to take cognizance of alleged violations of said law, if had by any court, would reside exclusively in a federal court, unless concurrent jurisdiction were granted by Congress. However, as Congress has not established or fixed any penalties for violations of said joint resolution and has not legislated with regard to the jurisdiction of the courts to entertain actions or proceedings for alleged violations of said law, no court has jurisdiction.

(c) The Supreme Court of Puerto Rico is without jurisdiction be-

cause this proceeding has been originally brought before this court by The People of Puerto Rico, based on the provisions of Act No. 33, approved by the Legislature of Puerto Rico on July 22, 1935, Special Session Laws, page 418, and on Act No. 47 of August 7, 1935, Special Session Laws, page 540, by the first of which an attempt has been made to grant original jurisdiction to the Supreme Court of Puerto Rico in all quo warranto proceedings brought by The People of Puerto Rico for violations of the provisions of the aforesaid Section 752, title 48 of the Code of the United States, and which provides that violations of the provisions of said Section 752 shall constitute sufficient cause to institute a proceeding in the nature of a quo warranto, and this Act was approved by the Legislature of Puerto Rico in excess of the delegated authority of the territorial legislature, as it is not local legislation and attempts to grant jurisdiction in cases in regard to which the Congress of the United States alone has power and authority to confer jurisdiction.

(d) The Supreme Court of Puerto Rico is without jurisdiction because by said Act No. 33 of July 22. 1935, an attempt has been made to enlarge and amend a law of the United States, to wit, Section 752, Title 48 of the United States Code, by attempting to confer to the Supreme Court jurisdiction to punish violations of said Federal Act and by providing penalties for violations thereof, to wit, those mentioned in Act No. 47 of the Legislative Assembly of Puerto Rico of August 7, 1935, Special Session Laws, page 530; and for this the Legislature of Puerto Rico had no authority and said law is consequently, null and void.

(e) The Supreme Court of Puerto Rico is without jurisdiction because the above mentioned Act No. 33 of July 22, 1935, is void because it violates the provisions of Section 34 of the Organic Act of Puerto Rico, as it contains provisions amending "An act establishing quo warranto proceedings," approved March 1, 1902, as amended, and said Act No. 33 establishes a new ground or motive for instituting a quo warranto proceeding, *i.e.*, violation of the provisions of Section 752, Title 48, of the United States Code, and of said subject, that is, of the amendment to the quo warranto Act which establishes a new basis or ground for bringing a quo war-

ranto proceeding, the title of said Act No. 33 gives no notice; in so far as it grants jurisdiction to the Supreme Court of Puerto Rico over quo warranto proceedings, the title of said Act makes no mention whatever of any statute defining and establishing the jurisdiction of said court—which said act attempts to enlarge and modify—nor of the section of the quo warranto Act which is amended. Although Act No. 33 so amends prior laws, no mention thereof is made in its title.

(f) The Supreme Court of Puerto Rico is without jurisdiction because this quo warranto proceeding is also based by The People of Puerto Rico on Act No. 47 of August 7, 1935 and this Act is equally void, as it was approved by the territorial legislature without any authority whatever, inasmuch as by said Act it has been attempted to establish penalties for the violation of an act of the Congress of the United States, while Congress did not provide or establish any penalties and because by said Act an attempt has been made to legislate on a matter, to wit, the holding of lands by corporations, which Congress has covered entirely and reserved to itself.

(g) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47 of August 7, 1935, which is an act entirely null and void, because it has been attempted by the said Act to establish penalties for violations of Section 3 of the Joint Resolution of Congress of May 1, 1900 (Section 752, United States Code, Title 48), which as a question of law and fact, is not a penal statute, and can not be converted into a penal law by a law of the Legislature of Puerto Rico, as the joint resolution, is a law of the United States and can only be amended by the Congress.

(h) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47 of August 7, 1935, which is null and void; as an attempt has been made through the said Act to enlarge the terms and scope of Section 3 of the Joint Resolution of May 1, 1900 (Section 752, Title 48 of the Code of the United States) and constitutes legislation in excess of the delegated powers of the Legislature of Puerto Rico. It has been attempted by said Act to enlarge and extend the terms and scope

of Section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900 (Section 752, Title 48, United States Code) since by said Act No. 47 an attempt has been made to fix consequences and penalties for violations of the terms of said Federal Act, as by the terms of Act No. 47 such violations shall constitute cause to institute a quo warranto proceeding and to declare the nullity of acts and contracts and to decree the cancellation of the entries and registrations made in the public registries of Puerto Rico and the confiscation of the real property and its sale at public auction. By said Act No. 47 an attempt has been made to enlarge and amend the terms of a Federal Act, by attempting to include penal provisions not included within the terms of the aforesaid joint resolution; by attempting to punish, as prohibited by the terms of said Federal Act, the possession of lands by corporations through other entities or agents; by attempting to punish, as prohibited by the terms of said Federal Act, the mere possession of lands in excess of 500 acres, when Section 3 of the said Joint Resolution of Congress of May 1, 1900, refers to "ownership and control" by corporations.

(i) The Supreme Court of Puerto Rico is without jurisdiction because Act No. 47, on which this proceeding is also based, is null and void, as it includes more than one subject, this being prohibited by the provisions of Section 34 of the Organic Act of Puerto Rico. Act No. 47, not only provides that quo warranto proceedings may be brought in certain cases therein enumerated, but also that the judgment rendered by the court—

> ". . . shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders

it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."

The Act consequently deals with quo warranto proceedings, with the nullity of acts and contracts, with the cancellation of entries or registrations made by virtue thereof in the public registries of Puerto Rico; and when the decree of nullity affects real property, The People of Puerto Rico is authorized, at its option, to start proceedings to confiscate said property or the sale thereof at public auction. If the latter procedure is chosen the court is ordered to fix the just value in the manner established by the law of Eminent Domain. Hence, the law deals with quo warranto proceedings, with the cancellation of acts done and contracts made, with the sale of immovables and with the condemnation of same.

(j) The Supreme Court of Puerto Rico is without jurisdiction because Act No. 47 is void, as it violates Section 34, paragraphs 8 and 9 of the Organic Act of Puerto Rico, because the first section of the said Act No. 47 refers to provisions of the Organic Act by its title only, without re-enacting or publishing those parts of the Federal Act attempted to be enlarged or amended. Moreover, by Section 2 of said Act No. 47, an attempt has been made to incorporate, by reference to its title, the law of eminent domain of Puerto Rico, this being a subject not mentioned in the title of said Act No. 47.

(k) The Supreme Court of Puerto Rico is without jurisdiction because said Act No. 47 of August 7, 1935, is null and void as it violates the provisions of Section 34 of the Organic Act of Puerto Rico, which provides that no bills with the exception of general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title. Said Act No. 47 ordains that the judgment rendered shall decree the nullity of all acts done and contracts made by the corporation or entity sued and the cancellation of entries or registrations made of such acts and contracts, which affects and destroys the rights legally acquired by creditors and by

other third persons, and of such matters the title of the Act does not give the least notice. Provisions of the law of eminent domain of Puerto Rico are included in this law making them applicable to quo warranto proceedings, without making any mention thereof in the title of the law. Said Act No. 47 provides that violations of the Organic Act of Puerto Rico or of its statutes shall be sufficient ground or cause for the institution of a quo warranto proceeding, without mentioning in its title the Organic Act or the statutes the violations of which would produce such effect or result. The petitioner, People of Puerto Rico, construes Act No. 47 in the sense that it allows quo warranto proceedings against individuals or entities which are not corporations, and in the title of the law no mention is made of quo warranto proceedings which may be brought against such persons or entities, but on the contrary both in the title of said act and of the quo warranto Act sought to be amended by Act No. 47 reference has only been made to corporations. Said Act No. 47 provides for a penalty of fine not for the acts that may have been committed by the corporation, which may be sued, and the penalty of imprisonment to which individuals may be subjected, without mentioning such penalties in its title. Said Act intermingles criminal provisions of a highly penal nature with provisions of a civil nature, thus converting into a penal statute an act which was formerly of a civil nature, without the least indication of such purpose in its title. Said law grants to The People of Puerto Rico the option to confiscate and acquire by purchase real property of a defendant corporation, thus authorizing one of the parties to determine the judgment which should be entered, and invading in such manner the judicial power, without mentioning the subject in the title of the law. The title of the Act suggests no intention of amending or extending provisions of the Organic Act or of the Joint Resolution of the Congress of May 1, 1900, with regard to the holding of lands, and nothing is said with reference thereto in the title of the law. The title of the Act does not suggest that the provisions thereof shall have retroactive effect.

(1) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47, which is

void as it authorizes the confiscation and deprivation of property without due process of law.

(ll) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47 of August 7, 1935, which is void, as it is an *ex post facto* law, in so far as it applies the penalties therein established to acts done and contracts made before the approval of the law, thus violating the provisions of the Organic Act which prohibit *ex post facto* laws.

(m) The Supreme Court of Puerto Rico lacks jurisdiction because this proceeding has been brought under Act No. 47, which is void, as it deprives the respondent of the due process of law and of the equal protection of the laws, inasmuch as it deprives the respondent of rights acquired through contracts which were valid at the time of their execution prior to said act and of the means of enforcing such rights, and deprives this respondent of rights and property acquired before the approval of said Act No. 47.

(n) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47, which is void, as it provides for the violation of contractual obligations and the Legislature of Puerto Rico is expressly forbidden by the Organic Act to approve any law impairing the obligation of contracts.

II. *The amended complaint does not state facts sufficient to constitute a cause of action.*

III. *The People of Puerto Rico has no legal capacity to sue.*

This proceeding has been brought by The People of Puerto Rico with the object of punishing alleged violations of the Joint Resolution of Congress of May 1, 1900. Since should such violations exist, they would be violations of a law of the United States and the United States has granted no authority to The People of Puerto Rico to request in its name that alleged violations of the aforesaid joint resolution be punished, The People of Puerto Rico lacks authority and capacity to maintain this action, and the bringing of same constitutes an usurpation of powers by The People of Puerto Rico. The authority which it has been attempted to confer to The People of Puerto Rico by Acts Nos. 33 and 47 is no authority at all, as said acts are

null and void, because they were enacted by the Legislature of Puerto Rico without any authority or power to do so and for other reasons.

IV. *That there is a defect of parties defendant, inasmuch as this proceeding is one that has been brought under the provisions of Acts Nos. 33 and 47, and any judgment rendered would necessarily have to be confined to what Act No. 47 provides.*

Section 2 of Act No. 47 of August 7, 1935, which amends Section 6 of the quo warranto Act, provides that the judgment rendered shall decree the nullity of all acts done and contracts made by the defendant corporation or entity, and the cancellation of every entry or registration made in the public registries of Puerto Rico, and hence, any proceeding wherein a judgment may be rendered decreeing the cancellation of acts and contracts and of every entry or registration in the public registries of Puerto Rico, must include as parties defendant all third persons who have contracted with the respondent.

V. *That the complaint is ambiguous, unintelligible and uncertain.*

As three causes of action are alleged therein, to wit:

(a) Alleged violation of the franchise;

(b) Alleged violation of the Joint Resolution of Congress of May 1, 1900; and

(c) Alleged violation of the public policy.

And said causes of action are not separately stated.

Wherefore, the respondent Rubert Hermanos, Inc., respectfully prays that the demurrers be sustained and the complaint dismissed.

San Juan, Puerto Rico, March 16, 1937.

J. SIFRE, JR.,
Attorney for RUBERT HERMANOS, INC.

Copy served this sixteenth day of March, 1937.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

[Title omitted.]

MINUTES OF THE HEARING OF THE MOTION TO STRIKE OUT AND OF THE DEMURRERS.

San Juan, Puerto Rico, April 12, 1937.

In the City of San Juan, Puerto Rico, at 2 P. M. of the day above mentioned, which had been previously set therefor, before Chief Justice del Toro and Associate Justices Wolf, Hutchison, Cordova Davila and Travieso, the motion to strike out and the demurrers filed by the defendant against the amended complaint were called for hearing. There appeared: Attorneys B. Fernandez Garcia, Attorney General of Puerto Rico, and Miguel Guerra Mondragon for the petitioner, and attorney Horacio Franceschi for the respondent.

The parties submitted without oral argument the motion to strike out, and the court, at the request of the respondent, granted to same a term of seven days to file brief in support of the demurrers, allowing a similar term to the petitioner for answering thereto, the argument to be thus considered as definitely ended.

On motion of the attorney general, the court agreed that Lester P. Schoene be also included as attorney of record of the petitioner.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

Approved:

EMILIO DEL TORO,

Chief Justice.

[Title omitted.]

MOTION REQUESTING AN ORDER CANCELLING THE NOTICES MADE IN THE REGISTRY OF PROPERTY OF SAN JUAN, SECTION TWO, OF THE COMPLAINT FILED HEREIN.

[Filed April 27, 1937.]

To the Honorable Supreme Court of Puerto Rico:

Now comes the respondent Rubert Hermanos, Inc., by its undersigned attorney, and respectfully states:

I. That the petitioner is the respondent herein.

II. That in the month of February, 1936, the plaintiff sent to the Registrar of Property of San Juan, Section Two, copy of the com-

plaint in quo warranto filed in this case by The People of Puerto Rico, for the taking of notice of the pendency of the action, and that the registrar of property entered said notice on the margin of the inscriptions of the properties described in Exhibit B attached to the complaint. That the notice of *lis pendens* entered by the registrar on the margin of the first entry of property No. 1947, at page 181 of Vol. 30 of Vega Baja, which is property number 28 in Exhibit B, reads as follows:

> "The People of Puerto Rico has brought against Rubert Hermanos, Inc., in the Supreme Court of Puerto Rico a quo warranto proceedings wherein it is prayed that judgment be entered decreeing the forfeiture of the franchise of the defendant corporation, that the corporation be prohibited from doing business in Puerto Rico, and that the corresponding fine be imposed, with all other pronouncements that in equity and justice may be proper, as extensively appears on the margin of the first entry of property No. 1134 at page 228 of Vol. 25 of Vega Baja."

And that a similar notice was entered on the margin of the inscriptions of the remaining properties mentioned in said exhibit.

That all of the properties specified in the exhibit attached to the complaint, on the margin of the inscriptions of which notice of the complaint was taken by the Registrar of Property of San Juan, Section Two, were acquired by this respondent prior to the approval of Acts, numbers 33 and 47, approved by the Legislature of Puerto Rico on July 22, 1935 (Special Session Laws of 1935, page 418) and August 7, 1935 (Special Session Laws of 1935, page 530), respectively.

III. That the notices of the pendency of the action made at the request of the plaintiff with the object of establishing a *lis pendens* on the properties described in Exhibit B are null and void, because the provisions of Section 91 of the Code of Civil Procedure of Puerto Rico are not applicable to a case like the present.

IV. That were the provisions of Section 91 of the Code of Civil Procedure applicable to a quo warranto proceeding, all the notices of *lis pendens* made in the registry on the margin of the entries of

all the properties described in Exhibit B are null and void for the following reasons:

(1) Act No. 47 in so far as it authorizes the imposition of fines and penalties for a violation of the Organic Act of Puerto Rico or of the Joint Resolution of Congress of May 1, 1900, is void, among other reasons, because the Legislature of Puerto Rico has no authority or power to authorize the imposition of fines and punishments for a violation of said laws, nor to enlarge, modify or amend federal acts, as has been attempted through said act.

(2) Act No. 47 is void because it includes more than one subject, which is prohibited by Section 34 of the Organic Act of Puerto Rico. Act No. 47 establishes not only that quo warranto proceedings may be brought in certain cases therein enumerated, but it also provides that:

> ". . . the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof, and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."

Therefore, the law deals with quo warranto proceedings, with the nullity of all acts done and contracts made, with the cancellation of every entry or registration made in the public registries of Puerto Rico; and if the decree of nullity affects real property, The People of Puerto Rico, at its own option, is authorized to confiscate said real property or to sell it at public auction. If The People chooses the last procedure the court shall fix the just value of the property

in the same manner as it is fixed in cases of condemnation proceedings. Hence, the law deals with quo warranto proceedings, with the cancellation of all acts done and contracts made, with the sale of real property and with condemnation proceedings.

(3) Act No. 47 is null because it violates Section 34, paragraphs 8 and 9 of the Organic Act of Puerto Rico, as Section one of said Act 47 makes reference to provisions of the Organic Act by its title only, without re-enacting or publishing those parts of the Organic Act attempted to be re-enacted or amended. Furthermore, an attempt has been made by Section 2 of said Act No. 47 to incorporate by reference to its title the law of eminent domain of Puerto Rico, a subject not mentioned in the title of said Act No. 47.

(4) Act No. 47 of August 7, 1935, is null and void because it violates the provisions of Section 34 of the Organic Act of Puerto Rico, which provides that no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title. Act No. 47 ordains that the judgment rendered shall decree the nullity of all acts done and contracts made by the corporation or entity sued and the cancellation of entries or registrations made of such acts and contracts, which affects and destroys rights legally acquired by creditors and other third persons, and of such matters the title of the law does not give the least notice. Provisions of the law of eminent domain of Puerto Rico are included in this law making them applicable to quo warranto proceedings without making mention thereof in the title of the law. The aforesaid Act No. 47 provides that violations of the Organic Act of Puerto Rico will constitute ground for the filing of an information in the nature of quo warranto, without mentioning the Organic Act in its title. The plaintiff, People of Puerto Rico, construes Act No. 47 in the sense that it allows quo warranto proceedings against individuals or entities which are not corporations, and in the title of this Act no mention is made of quo warranto proceedings which may be brought against such persons and entities, but on the contrary, both in the title of the said Act and of the quo warranto Act sought to be amended by Act No. 47, reference has only been made to corporations. Act No. 47 provides for a penalty of fine, not for the

acts that may have been committed by the corporation which may be sued and for the penalty of imprisonment to which individuals may be subjected, without mentioning such penalties in its title. Said Act intermingles criminal provisions of a highly penal nature with provisions of a civil character, thus converting a law which was formerly of a civil nature into a penal law; without the least indication of such purpose in its title. The aforesaid act grants The People of Puerto Rico the option to confiscate and acquire by purchase the real property of a defendant corporation, thus authorizing in effect one of the parties to determine the judgment which would be entered, and invading in such manner the judicial power, without mentioning this subject in its title. The title of the act suggests no intention of amending or extending provisions of the Organic Act of Puerto Rico or of the Joint Resolution of the Congress, of May 1, 1900 with regard to the holding of lands and nothing is said with reference thereto in the title. The title of the Act does not suggest that the provisions thereof shall have retroactive effect.

(5) Act No. 47 is null and void because it deals with the violation of contractual obligations and the Legislature of Puerto Rico is expressly prohibited by the Organic Act from approving any law impairing or affecting the obligation of contracts, and moreover, because said Act denies due process and the equal protection of the laws.

(V) That in the event that the provisions of Section 91 of the Code of Civil Procedure were applicable, the notices of the pendency of the action, entered in the registries at the request of the plaintiff with the object of establishing a *lis pendens*, would be null and void, moreover, as in such a case such *lis pendens* would be authorized under Section 91 of the Code of Civil Procedure solely on the basis of the provisions of Section 6 of "An Act establishing quo warranto proceedings", approved March 1, 1902, as amended by Section 2 of Act No. 47, entitled "An Act to amend Sections 2 and 6 of 'An Act establishing quo warranto proceedings, approved March 1, 1902', as amended by Act No. 37, approved April 24, 1931, and for other purposes", which attempt to authorize a judgment decreeing the

nullity of all acts done and contracts made by the defendant corporation or entity, the cancellation of every entry or registration made by the said corporation in the public registries of Puerto Rico and the confiscation or sale at public auction of the real property of the defendant corporation or entity when the court declares in its judgment that the corporation has performed acts or exercised rights not conferred by law, or in violation of the express provisions of the Organic Act of Puerto Rico; and the provisions of Act No. 47, the only ones which in such a case would authorize the notice of a *lis pendens*, are null and void for the following reasons:

(a) Because they establish penalties and confiscations that did not exist at the time the immovables were acquired and hence the said Act No. 47 is an *ex post facto law* forbidden by Section 2 of the Organic Act of Puerto Rico.

(b) Because they deprive the defendant of the due process of law and of the equal protection of the laws, in violation of the Organic Act of Puerto Rico, insofar as they affect contracts executed by the defendant and recorded in the registries of property of Puerto Rico prior to the approval of Act No. 47. In this connection the defendant sets forth that the real properties as to which the notices of *lis pendens* were recorded are subject in some cases to contracts entered into with other persons, which contracts have been duly executed and recorded.

(c) Act No. 47 impairs the obligation of the contracts of this petitioner and deprives it, as already said, of the due process and of the equal protection of the laws, inasmuch as it deprives the defendant of rights acquired through valid and legal contracts, executed prior to the approval of the aforesaid Act, and of the means of enforcing such contracts.

Wherefore the petitioner respectfully prays this Honorable Court that an order be entered declaring that in this case the notice of *lis pendens* does not lie and ordering the cancellation of the notices

made in the Registry of Property of San Juan, Section Two, of the complaint filed in the present case by the People of Puerto Rico.

San Juan, Puerto Rico, April 26, 1937.

JAIME SIFRE, JR.,
Attorney for RUBERT HERMANOS, INC.

Copy served this twenty-seventh day of April, 1937.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

[Title omitted.]

ANSWER TO THE MOTION REQUESTING THE CANCELLATION OF THE NOTICES OF LIS PENDENS IN THE REGISTRY OF PROPERTY OF SAN JUAN.

[Filed May 3, 1937.]

To the Honorable Court:

Now comes The People of Puerto Rico, plaintiff herein, and, answering the motion filed by Rubert Hermanos, Inc., wherein it prays that the cancellation of the notices of *lis pendens* made in the Registry of Property of San Juan be ordered, hereby states and alleges:

I. That the aforesaid notices are valid and proper, as the provisions of section 91 of the Code of Civil Procedure are applicable.

II. The objections alleged and specified by the respondent under paragraphs 4 and 5 of its motion are not an adequate matter over which the registries of property have jurisdiction.

III. The defendant has an adequate and proper remedy by requesting the cancellation of the aforesaid notices in the district court.

IV. The aforesaid notices of *lis pendens* should remain in order that the final judgment to be rendered in due course of this Honorable Court may be effective and executed in its entirety.

For the above stated reasons the plaintiff prays this Honorable Court that the said motion be overruled.

San Juan, Puerto Rico, May 3, 1937.

Respectfully,

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

MIGUEL GUERRA MONDRAGON,
RAFAEL RIVERA ZAYAS,
LESTER P. SCHOENE,
Associate Attorneys.

IN THE SUPREME COURT OF PUERTO RICO

No. 1 Quo Warranto

The People of Puerto Rico, Petitioner,

v.

The Fajardo Sugar Co. of Puerto Rico; The Fajardo Sugar Growers Association and The Loiza Sugar Co., Respondents.

No. 2 Quo Warranto.

The People of Puerto Rico, Petitioner,

v.

Rubert Hermanos, Inc., Respondent.

MINUTES OF THE HEARING OF MOTIONS FILED BY THE DEFENDANTS FAJARDO SUGAR GROWERS ASSOCIATION AND RUBERT HERMANOS, INC., FOR THE CANCELLATION OF NOTICES OF LIS PENDENS IN THE REGISTRIES OF PROPERTY OF HUMACAO AND SAN JUAN.

San Juan, Puerto Rico, May 3, 1937.

In the City of San Juan, Puerto Rico, at 2 P. M. of the day above stated and already set for the hearing, and before Chief Justice del Toro and Associate Justices Wolf, Hutchison, Cordova Davila and Travieso, there were called for hearing the motions filed by the Fajardo Sugar Growers Association and Rubert Hermanos, Inc., in the above entitled cases, which were jointly heard. There appeared: Attorneys Benigno Fernandez Garcia, Attorney General, Miguel

Guerra Mondragon, Lester P. Schoene, Luis Venegas Cortes, Rogelio Fernandez Garzot and Raphael Baragano for the plaintiff, and attorneys Jaime Sifre and Orlando Antonsanti for the Fajardo Sugar Growers Association and Rubert Hermanos.

The motions were argued by attorneys Fernandez Garcia and Sifre in behalf of their respective clients,

A motion having been filed by the codefendant Fajardo Sugar Co. asking for a term for filing a brief regarding the issues involved in the motions wherein cancellation of the notices of *lis pendens* was asked, such motion was denied, and a writing of codefendant Loiza Sugar Co. being submitted accepting the cancellation, the court resolved that the same be attached to the record for the proper action.

The court allowed The Fajardo Sugar Growers Association and Rubert Hermanos a term of ten days for filing a brief covering both cases and to the plaintiff another of ten days for filing an answer thereto.

I certify:

JOAQUIN LOPEZ,
Secretary-Reporter.

Approved:

EMILIO DEL TORO,
Chief Justice.

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO,

(BY THE COURT, AT THE SUGGESTION OF MR. JUSTICE TRAVIESO).

San Juan, Puerto Rico, July 13, 1937.

Considering the motion filed by the respondent corporation requesting that certain averments of the amended complaint be stricken out.

Whereas the eliminations prayed for in said motion are the same alleged in the motion to strike out presented to the original complaint; and

Whereas the object in reproducing said motion has been to safeguard the rights of the petitioner for further proceedings, as ex-

pressly stated by counsel for the respondent during the hearing of the motion;

Therefore, for the grounds and reasons stated in the order entered by this court on February 19, 1937, the motion to strike out is hereby overruled.

It was so ordered by the court as witness the signature of the Chief Justice. Mr. Justice Cordova Davila took no part.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

IN THE SUPREME COURT OF PUERTO RICO.

No. 1. Quo Warranto.

The People of Puerto Rico, Petitioner,

v.

The Fajardo Sugar Company of Porto Rico, The Fajardo Sugar Growers' Association and Loiza Sugar Company, Respondents.

OPINION OF THE COURT,
DELIVERED BY MR. JUSTICE TRAVIESO.
San Juan, Puerto Rico, July 12, 1937.

Each one of the three defendant corporations has interposed, separately, demurrers to the amended information. We will consider and decide them in a single opinion and in the same order that they were submitted to us.

> "1st.—That this Supreme Courts lacks jurisdiction to entertain this quo warranto proceeding because Acts No. 33 of July 22, 1935, and No. 47 of August 7, 1935, are null and void inasmuch as they were enacted by the Insular Legislature in excess of its legislative powers and in contravention of the provisions of the Organic Act of Puerto Rico and of the Federal Constitution."

The same legal questions raised by this demurrer and the same reasoning offered in support thereof were considered by this Supreme

Court in passing upon the motions to dismiss the original information which was presented by each one of the defendants; and since no new reasons or legal grounds have been urged which would compel us to change our views, for the reasons stated in the opinion delivered by this court in the above entitled case on June 4, 1936, reported at 50 P.R.R. , the demurrer for want of jurisdiction must be overruled.

"2nd—That the amended information does not state facts sufficient to constitute a cause of action."

The arguments which the defendants advance in their briefs to attack the sufficiency of the information are largely a repetition of the arguments adduced in support of the demurrer for want of jurisdiction which we have already overruled.

We have carefully examined the amended information. Adhering to the procedural rule requiring allegations to contain nothing but a statement of the ultimate facts on which plaintiff's right is based, the information in this case alleges: That The Fajardo Suguar Company of Puerto Rico, hereinafter referred to as "The Fajardo", is a corporation organized under the laws of Puerto Rico and authorized to engage in agriculture and in the manufacture of sugar and to acquire real property in this Island; that its articles of incorporation (Article Fourth, paragraph 10) provide that its right to own or control lands in Puerto Rico shall be limited to 500 acres only, in accordance with the provisions of Section 3 of Joint Resolution No. 23 of the Congress, approved May 1, 1900; that in 1919 said corporation acquired all the properties and assets of the "Fajardo Sugar Company" of New York, which during the years 1905 to 1919, by itself or through the instrumentality of "The Fajardo Sugar Growers Association" had acquired ownership or control of some 30,700 acres of land; that the other defendant, "The Fajardo Sugar Growers Association", which hereinafter will be referred to as "The Growers", was organized under the laws of the State of New York to grow and cultivate sugar-cane and is authorized to acquire the lands necessary to such purposes, within the limitations fixed by law; and that although "The Growers" describes itself as a stock company, said en-

tity is to all practical purposes a corporation in accordance with the Constitution, laws and jurisprudence of the State of New York, under whose laws it was organized, and also because by its articles of association, by its methods of doing business, by its contracts and by a certain deed of trust it has invested itself with the attributes of a corporation. After setting forth in detail the provisions of the articles of association by virtue of which the said association has invested itself with the principal attributes of a corporate entity, the information alleges that "The Growers" does all its credit transactions in the name of "The Fajardo" through a certain contract entered into on March 27, 1923, whereby said corporation agreed to look only to the assets of "The Growers" for the satisfaction of any debt of the latter in favor of "The Fajardo"; that by virtue of that agreement "The Growers" avoids any liability by its members for the debts of the association; that further security against any liability by the individual members for the debts of the association is obtained by depositing in trust 2,999 shares out of a total of 3,020 shares of the capital stock of the association, under the agreement that all dividends accruing upon said shares of stock are to be paid over to "The Fajardo" for distribution *pro rata* among its stockholders, but without imposing any liability on the *cestui que trust* for the debts of "The Growers".

The information goes on to allege that the "Loiza Sugar Company", which we will hereinafter designate as "The Loiza", is a corporation organized under the laws of Puerto Rico and authorized to buy or lease real property; that its articles of incorporation (Section 4, subdivision (c)) expressly provide that its right to own and control lands in Puerto Rico shall be limited to 500 acres only, and such limitation is described as being in accordance with the law of Congress of May 1, 1900; that on October 6, 1925, in violation of its charter and of the law of Congress, "The Loiza" was the owner of and controlled some 11,038.13 acres of land in this Island; that on October 6, 1925, "The Fajardo" purchased all the stock of shares of "The Loiza", thus acquiring the ownership and control of all of its farm lands and the management of its business; that on January 10, 1935, "The Loiza" sold to "The Growers" all the farm lands

it owned and controlled in this Island, except 598.72 acres, and that said transfer was made for the purpose of concealing the true ownership thereof; that the sum total of farm lands now owned by "The Growers" and in which it now engages in agriculture amounts to 23,123.41 acres.

It is also alleged in the information that on March 19, 1919 "The Greenwich Trust Company", a corporation of the State of Connecticut, and Mr. John S. Keith, who was acting at the instigation, under the control and on behalf of "The Fajardo" and "The Growers", entered into a trust indenture whereby 2,999 out of the total 3,020 shares of the capital stock of "The Growers" were deposited with the trust company aforesaid which was to receive all dividends accruing upon said shares of stock and to pay them to "The Fajardo" to be distributed among the stockholders of this latter corporation; that, according to plaintiff's information and belief, "The Fajardo" obtained complete control of the property and the business of "The Growers" by virtue of the said trust indenture, which control it actively exercises, and bound itself to assume any financial loss which might be incurred in the business of said association; that the managers, officers, and trustees of "The Growers" have often been at the same time officers or directors of "The Fajardo" and have acted and continue to act at the instigation, under the control and on behalf of the latter corporation; that by means of the control which it exercises over the representatives of "The Growers" and by means of the trust indenture aforementioned, "The Fajardo" governs and controls the property and business of "The Growers" as effectively as if they were its own.

Lastly it is alleged that by a contract entered into on March 27, 1923, "The Growers" agreed to deliver its cane crop to "The Fajardo" and the latter undertook to buy the said sugar cane at current prices based upon 60 percent of the sugar content, but in no event to be less than the cost of producing such cane, including expenditures for rentals, interest, and taxes; that under the terms of the said contract the growing, harvesting, and delivery of the sugar-cane could not be carried out with a reasonable expectation of profit; that by means of said contract and said trust indenture, "The Fajardo"

absorbs the profits and the losses which may be incurred in the business and the transactions of "The Growers"; that the total area of farm lands that "The Fajardo" now owns or controls, both by itself and through its two subsidiaries or agents, the other two defendants herein, amounts to 23,800 acres, which is contrary to the public policy of The People of Puerto Rico and in open conflict with the economic welfare of the community.

If we admit, as we must admit for the purposes of a demurrer for lack of a cause of action, that the facts alleged are true, the information in our opinion sets forth facts sufficient to constitute a cause of action against all and each of the defendant corporations.

Taken as a whole, the information states in clear and precise terms the conception, development and existence of a preconceived plan carried out for the purpose of evading and violating the legal restrictions prohibiting agricultural corporations from owning or controlling more than 500 acres of land devoted to agriculture. In that plan The Fajardo Sugar Company of Puerto Rico is depicted as the master mind, and, as secondary characters, subject to control and direction of the former, "Loiza Sugar Company" and "The Fajardo Sugar Growers' Association". The means and ways of which "The Fajardo" availed itself to acquire and hold under its domination or control 23,800 acres of arable lands appear specifically alleged in the information and show *prima facie* that the law has been violated by defendants.

This demurrer must be overruled.

3rd.—The Joint Resolution of Congress of May 1, 1900, discriminates arbitrarily, capriciously, and unconstitutionally against agricultural corporations, favoring civil partnerships and other entities also devoted to agriculture, thus violating the Fifth Amendment of the Constitution.

The pertinent part of said Joint Resolution (31 Stat. at Large 23, p. 715) reads as follows:

"Section 3.— . . . No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reason-

ably necessary to enable it to carry out the purposes for which it was created, *and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture.* Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable." (Italics are ours.)

Said section has been translated into Spanish thus:

"Ninguna sociedad estara autorizada para efectuar negocios de compra y venta de bienes raices; ni se le permitira poseer o tener dicha clase de bienes a excepcion de aquellos que fuesen racionalmente necesarios para poder llevar adelante los propositos a que obedecio su creacion; *y, en lo sucesivo, el dominio y manejo de terrenos de toda sociedad autorizada para dedicarse a la agricultura, estaran limitados, por sus estatutos, a una cantidad que no exceda de quinientos acres; y esta prevision sera adoptada para impedir a cualquier miembro de una sociedad agricola que tenga interes de ningun genero en otra sociedad de igual indole.* Podran, sin embargo, las sociedades efectuar prestamos, con garantias sobre bienes raices, y adquirir estos cuando sea necesario para el cobro de los prestamos; pero deberan enajenarlos dentro de los cinco anos desde que reciban el titulo de propiedad de los mismos. Las sociedades que no hayan sido organizadas en Puerto Rico, y que hagan negocios alli, estaran obligadas a cumplir lo dispuesto en esta Seccion, hasta donde sea aplicable." (Italics are ours.)

The Spanish version of the words we have underscored in the English text is so defective that, although the English text is the one which must prevail, we feel obliged to make our own translation so

that it may serve as a basis for the construction we are to give to the statute. The correct translation, in our opinion, is the following:

> "Y toda corporacion que en lo sucesivo fuere autorizada para dedicarse a la agricultura sera limitada por sus clausulas de incorporacion al dominio y control de no mas de quinientos acres de tierra; y esta disposicion sera interpretada en el sentido de impedir a cualquier miembro de una corporacion dedicada a la agricultura que este interesado en alguna forma en cualquiera otra corporacion dedicada a la agricultura."

Defendant corporations argue that the legal provision transcribed is unconstitutional because it denies them the "equal protection of the laws", by discriminating against agricultural corporations and in favor of civil agricultural partnerships. The numerous cases cited in support of this contention have no application to the instant case. They all refer to fiscal statutes imposing a tax on certain corporations already in existence and exempting from payment thereof other corporate entities devoted to similar businesses.

In the instant case we are not dealing with corporations already created under the protection of a former law. The limitation provided by the statute under construction is solely applicable to "every corporation hereafter authorized to engage in agriculture"—*toda corporacion que en lo sucesivo fuere autorizada para dedicarse a la agricultura.* "The Fajardo Sugar Company of Puerto Rico" and "Loiza Sugar Company" were organized under the laws of Puerto Rico subsequent to the date on which the Joint Resolution of May 1, 1900 became effective, and in compliance with its provisions, both inserted in their articles of incorporation the statutory limitation which precludes them from owning and controlling arable lands in excess of 500 acres. Had they failed to accept or include those statutory requisites in their articles of incorporation, the said corporation could have never acquired legal existence. And "The Fajardo Sugar Growers' Association", when it wilfully engaged in business and in agriculture in Puerto Rico, bound itself to abide by the provisions of the statute.

A corporation, as defined by Chief Justice Marshall, is an artificial

being, invisible, intangible, and existing only in contemplation of law; and it can only be created in accordance with the terms of some legislative provision. *Dartmouth College* v. *Woodward*, 4 Wheaton 518, 636; *Feiner* v. *Reiss*, 98 N. Y. App. Div. 40; *Pennsylvania Railroad Co.* v. *Canal Commissioners*, 21 Pa. St. 9; *Stowe* v. *Flagg et al.*, 72 Ill. 397; *Hoadley* v. *County Commissioners*, 105 Mass. 519.

Incorporation, as an instrumentality to engage in any business, is not an inherent right of the citizen. It is a privilege granted by the State to a number of citizens so that they may act as a single person, under a common name, with limited liability. Since a corporation is a creature of positive law, its rights, powers and duties can be but those provided by the statute which gave it legal existence. See *United States* v. *Trinidad Coal Company*, 137 U. S. 160; *In Re Gibbs Estate*, 157 Pa. St. 59.

States have saved in their statutes regulating corporations, the power to limit the capital; to specify the kind of business in which this kind of associations may engage; to fix the nominal value and the kinds of stock into which the capital may be divided; to enumerate the powers which a corporation may exercise in the development of its business; to fix the amount and the nature of the obligations it may contract, etc.

In addition to the powers that their charter may confer upon them, corporations can exercise all such implied powers as may be indispensably necessary, convenient or adequate to the exercise of their express powers.

The defendant corporations were organized under a law which expressly prohibits them to own or control over five hundred acres of farm lands, a prohibition which was set forth in express and clear terms in their articles of incorporation. The argument that said corporations need more than five hundred acres in order to carry out the main purpose for which they were organized—the growing of sugarcane and the manufacture of sugar—and that, therefore, they have the implied powers to own and control the number of acres necessary for such purposes, fails to convince us, inasmuch as the doctrine of implied powers cannot be invoked in view of the express prohibition of the statute; especially where that prohibition was

embodied in said statute in order to make the public policy announced by the state which created said corporations, valid and effective. The end sought by the statute is to prevent a small number of corporations from getting control of the arable lands of this small Island of 3,435 square miles—Frankenstein monsters, as Justice Brandeis calls them in *Liggett Co.* v. *Lee*, 288 U. S. 548—and to protect its population of 1,700,000 souls against a monopoly which would end by converting them into mere serfs of a big sugar factory.

We are of opinion that the Joint Resolution of May 1, 1900 does not violate any of the rights of the defendant corporations, nor does it deny them in any way whatsoever the equal protection of the laws.

We must further hold that the defendant corporations are estopped from alleging the unconstitutionality of the statute. Their incorporators requested and obtained from the State a corporate franchise worded in accordance with the statute they now attack, and they cannot be permitted to reject now its limitations without waiving at the same time the benefits and privileges of incorporation. Says Corpus Juris:

> "Where corporations have been organized which proceed to do business under the provisions of a statute, and receive benefits under it, they cannot be heard to allege that such a statute is unconstitutional." 12 C. J. 770, sec. 194.

See *Grand Rapids & Indiana Railway Co.* v. *Osborn*, 193 U. S. 17; 48 L. Ed. 598, 694; *St. John* v. *Building & Loan Ass'n*, 136 La. 448; 113 N. W. 863; *Minneapolis & St. L. R. Co.* v. *Gowrie & N. W. Ry. Co.*, 123 Iowa 543, 99 N. W. 181, 183, *State* v. *Michel*, 125 La. 55, 51 So. 66.

The statute in question is not a law of a mandatory character. It is optional by nature. The incorporators of the defendant entities were not bound to choose incorporation as the means to develop their business in Puerto Rico. The State offered them the opportunities and privileges of incorporation, but subject to all those limitations and restrictions provided by the statute itself and by other

laws in force for the protection of the insular community. The Supreme Court of Massachusetts, in a case similar to the instant one, expressed itself as follows;

> "They were made the conditions upon which the corporation came into existence and accepted its franchise. If these restrictions were originally lawful, and if they have not been withdrawn or affected by subsequent modification thereof, the corporation cannot, while it continues to exercise its franchises, complain of their enforcement. It is as if the corporation had been created by a special charter containing the same restrictions. The corporation can raise no question of the constitutionality of a proceeding in accordance with the charter which it was content to accept. It has come into being, and has consented to come into being, subject to these restrictions and cannot be heard to complain of them." *Murphy et al.* v. *Worcester Consol. St. Ry. Co.*, 199 Mass. 279; 85 N. E. 507, 509.

See also *State* v. *Railroad*, 75 N. H. 327, 74 Atl. 542; *Electric Co.* v. *Dow*, 166 U. S. 489, 41 L. Ed. 1088; *Mayor, etc. of City of New York* v. *Manhattan Ry. Co.*, 143 N. Y. 1, 37 N. E. 494, 501.

Even if the defendant corporations had not inserted in their charters the 500-acre limitation, they still would be equally bound by the statute which was already in force on the date of their incorporation, inasmuch as it is a well-established juridical doctrine that "the laws under which corporations organize become a part of their charters and are binding on them". 12 C. J. 771, section 194; *Alabama & V. Ry. Co.* v. *Odeneal*, 73 Miss. 34, 19 S. 202; *Interstate Ry. Co.* v. *Massachusetts*, 207 U. S. 79, 52 L. Ed. 111; *Kansas City & R. R. Co.* v. *Stiles*, 242 U. S. 111, 117.

The power of the National Congress to limit the amount of land which an agricultural corporation may legally own within the territorial limits of Puerto Rico is indisputable. It is supported by numerous decisions which we shall merely cite so as not to make this opinion unnecessarily lengthy. See *El Paso, etc., N. E. Ry.* v. *Gutierrez*, 215 U. S. 87; *National Bank* v. *Yankton County*, 101 U. S. 129; *United States* v. *McMillan*, 165 U. S. 504; *Cornell University* v.

Fiske, 111 N. Y. 66, affirmed in 136 U. S. 152; *Mormon Church* v. *United States*, 136 U. S. 1.

4th.—That there is a misjoinder of parties defendant.

The Loiza Sugar Company alleges it is not a proper or necessary party in this proceeding because even on the hypothesis that The Fajardo Sugar Company of Puerto Rico owned a certain number of its shares of stock, the applicable legal remedy would not be the dissolution of both corporations, but to order "The Fajardo" to dispose of the stock it owns, should any law so provide.

In the opinion delivered on June 4, 1936, in this same proceeding (50 P. R. R.) we stated that "in accordance with the terms of the information, the central entity violating the law is the defendant, The Fajardo Sugar Company of Puerto Rico"; and that the other two defendants are, according to the terms of the information, "its subsidiary entities" used as agencies to control and possess lands in excess of those permitted by law and by their own charters.

If it is true—and we must admit that it is, for the purposes of a demurrer—that on October 6, 1925, The Loiza Sugar Company was the owner of more than eleven thousand acres of land, which it acquired in violation of law; that on that date The Fajardo Sugar Company bought all of the shares of stock of "The Loiza" and secured the control and management of its affairs; that on January 10, 1935, "The Loiza" sold to the Fajardo Sugar Growers' Association all the lands it owned, with the exception of 598.72 acres, and that said transfer was effected in order to conceal the entity truly owning the said lands; and, last, that The Fajardo Sugar Growers' Association is a subsidiary of The Fajardo Sugar Co., and that the former is controlled, financed and managed by the latter, and that this one has further used it as a means or agency to acquire the ownership or the control of 30,700 acres of land, in contravention of the statute and of its charter, then we must arrive at the inevitable conclusion that all and each of the defendant entities are proper and necessary parties to this proceeding. It would not be possible to get to the bottom of the alleged illegal combination and to command respect, through a judgment of this court, for the public policy of decentralizing the arable lands of our Island, if we did

not subject to our jurisdiction all those persons or juridical entities pointed out in the information as the integrating parties to the alleged combination. The Loiza Sugar Company seems to be one of the links of the chain allegedly forged by The Fajardo Sugar Co. to manacle the law. It is, in our opinion, a necessary party in this proceeding. This demurrer must be overruled.

It is alleged in behalf of The Fajardo Sugar Growers' Association that it has been misjoined as a party to this proceeding. The ground for this demurrer is that said association is not a corporation in the sense and within the scope that the word corporation has in the Joint Resolution of May 1, 1900.

It is alleged in the information that according to the law and jurisprudence of the State of New York the said association is for all practical purposes a corporation; and, further, that by its articles of association, by its methods of doing business, by its contracts and by the terms of certain trust indenture, to which "The Fajardo" is a party, "The Growers" has invested itself with all the attributes of a corporation. In the statement that we made at the beginning of this opinion we summarized those allegations of the information tending to establish the financial control which "The Fajardo" exercises over "The Growers", over its shares of stock, over its dividends, profits, benefits, etc.

The final decision of the legal question as to whether "The Growers" is or is not a corporation, within the reach and meaning of the statute, necessarily depends upon the construction that we may give to its articles of association, on the construction that the courts of the State of New York have given to its laws, and on the sufficiency of the evidence that the party complainant may adduce to establish the facts alleged by it. The demurrer necessarily admits the truthfulness of the alleged facts. And these facts are, in our opinion, sufficient for us to hold that The Fajardo Sugar Growers' Association is a necessary party to this proceeding. And it would not be improper to state herein that we would consider it a necessary party, even though it were not a corporation, if from the allegations and the evidence it were to appear that the said association is a subsidiary of The Fajardo Sugar Company of Porto Rico and being used by it as an instrument,

means or agency to violate the law and prevent its sanctions. The interdependence of the three defendant entities among themselves and the intimate relationship existing between the facts imputed to all and each of them—facts constituting the illegal transaction which is the subject of the cause of action—are by themselves sufficient for us to hold that the three defendant entities are necessary parties, and that the demurrer must be overruled.

5th.—Misjoinder of actions.

We have carefully studied the very able arguments of counsel for the Fajardo Sugar Company and for The Fajardo Sugar Growers' Association to convince us that eight different causes of action have been unduly joined in the complaint. They have failed.

The information denounces the conception and the realization of a general plan, preconceived and carried into effect for the purpose of violating the law. The Fajardo Sugar Company of Puerto Rico is pointed out as the principal party and as the principal beneficiary under the plan. The other two defendants appear as parties secondary, as media or instruments of which it avails itself for the development of the plan. The sole purpose of the plan is to enable The Fajardo Sugar Company of Porto Rico to own or control 23,800 acres of land suitable for the growing of sugar-cane in violation of law and of the public policy announced by the Congress and by The People of Puerto Rico.

The acts imputed to each one of the three defendants, as overt acts committed in compliance with a central direction and a common plan, cannot be considered as different and individual causes of action which must be separately established. All these acts are so intimately interrelated that in reality they constitute one sole transaction. One sole objective is also sought through the action filed—to dissolve and dismember an illegal combination through the dissolution of its integrating parts, and to break up the latifundium created by it.

> "From the very nature of things to constitute a misjoinder there must be two or more causes of action stated. A demurrer for misjoinder of causes of action does not, therefore, lie merely because a complaint has pleaded a single cause of action in two or more counts; because the contract sued on specifies several

distinct items or payments to be made; because several injuries are alleged; because the acts done in pursuance of a conspiracy embrace different transactions; or because more than one species of relief is demanded." 1 Bancroft's Code Pleading, pages 338–339.

See also *Lucero et al.* v. *Heirs of Vila,* 17 P. R. R. 141; *Battle* v. *Torruellas,* 39 P. R. R. 188; *Serra Garabis & Co., Inc.* v. *Municipality,* 42 P. R. R. 452; *Stubbe Bros., Inc.* v. *Diaz,* 43 P. R. R. 75; *E. Sole & Co.* v. *Rocafort,* 45 P. R. R. ; *Cochran* v. *Fernandez,* 47 P. R. R. ; and *Dondell* v. *Shoo,* 20 Cal. App. 424.

In our opinion, the alleged misjoinder does not exist. The demurrer must be overruled.

To conclude, we will say that the amended information is perfectly intelligible, free from ambiguities, and that its perusal has left no doubt in our mind as to the cause of action brought or as to the sufficiency of the facts alleged to support it. The arguments adduced to the contrary are not convincing.

For the foregoing reasons all and each of the demurrers filed must be overruled. And each one of the defendants is granted a term of thirty days to answer the amended information.

MARTIN TRAVIESO,
Associate Justice.

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO.

(By the Court, at the Suggestion of Mr. Justice Travieso.)

San Juan, Puerto Rico, July 13, 1937.

Considering the demurrers filed by the defendant corporation to the amended complaint presented herein and the briefs of the parties for and against the said demurrers having been examined;

Whereas the demurrers presented herein are identical to those filed by the respondents in quo warranto proceeding number 1, *The People of Puerto Rico* v. *The Fajardo Sugar Company of Puerto Rico et al.,* for the reasons and grounds stated in the opinion delivered yesterday in said quo warranto proceeding number 1, each and everyone of the

demurrers presented by the defendant corporation is hereby overruled and the defendant is granted a term of thirty days to answer to the complaint.

It was so ordered by the court as witness the signature of the Chief Justice. Mr. Justice Wolf agrees with the result. Mr. Justice Cordova Davila took no part.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO.

(BY THE COURT, AT THE SUGGESTION OF MR. JUSTICE TRAVIESO.)

San Juan, Puerto Rico, July 13, 1937.

Considering the motion filed by the defendant corporation requesting that the cancellation of the notices of *lis pendens* made in the Registry of Property of San Juan, section two, of the complaint presented herein be ordered, and the briefs filed by both parties having been examined;

Whereas the grounds of said motion and the arguments adduced in support thereof are identical to those presented in support of a motion filed for the same purpose in quo warranto proceeding number 1, brought by the People of Puerto Rico against the Fajardo Sugar Company of Puerto Rico et als., for the reasons stated in the opinion delivered yesterday in said quo warranto proceeding number 1, the cancellation prayed for is hereby denied.

It was so ordered by the court as witness the signature of the Chief Justice. Mr. Justice Cordova Davila took no part.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

IN THE SUPREME COURT OF PUERTO RICO.

No. 1. Quo Warranto.

The People of Puerto Rico, Petitioner,

v.

The Fajardo Sugar Company of Porto Rico, The Fajardo Sugar Growers' Association and Loiza Sugar Company, Respondents.

OPINION OF THE COURT

DELIVERED BY MR. JUSTICE TRAVIESO.

San Juan, Puerto Rico, July 12, 1937.

On April 26, 1937, the respondent The Fajardo Sugar Growers' Association filed an amended motion requesting the cancellation of the records made in the Registries of Property of Humacao and San Juan, with the object of giving notice of the pendency of this quo warranto proceeding. These records of *lis pendens* were made at the margin of the records of several properties belonging to said respondent, which properties are described in Exhibits D and E filed with the complaint. Petitioner alleges that all the properties affected by the record of the notice of *lis pendens*, with the exception of those described under the numbers 62, 65, 68, 69, 70, 71, 93, and 96 of Exhibit E, were acquired by it prior to the passing of acts number 33 and 47, approved on July 22 and on August 7, 1935, respectively (Laws of Puerto Rico, Special Session, p. 418 and 530); that the records made are ineffective and null because the provisions of Section 91 of the Code of Civil Procedure are not applicable to a case like this; and even though said provisions be applicable, said records were ineffective and null:

1. Because said Act No. 47 is invalid in so far as it authorizes the imposition of a penalty for violations of the Organic Act or of the Joint Resolution of Congress of May 1, 1900, because the Insular Legislature had no power to punish violations of Federal statutes.

2. Because said Act No. 47 is null because it includes more than one matter, in violation of Section 34 of the Organic Act of Puerto Rico, the same referring to quo warranto proceedings; cancellation of

records, nullity of acts and contracts, sale and condemnation of property.

It is claimed that Act No. 47 is null, also, because it violates Section 34 of the Organic Act by referring in its section 1 to provisions of the Organic Act by their title only without reproducing or publishing those parts of the federal statute which were sought to be extended or amended; because it tries to incorporate by reference to its title the Law of Eminent Domain of Puerto Rico, without referring to the matter in the title of Act No. 47; because The People of Puerto Rico interprets it in the sense of authorizing quo warranto proceedings against individuals or entities which are not corporations, without its title so stating; because it imposes penalties without mentioning them in its title; because the title of the law fails to state that its provisions will have retroactive effect; and because it impairs the obligation of contracts of the respondents.

The respondent claims that the provisions of Act No. 47 can not be applied to it, because it is not a corporation.

It is lastly alleged in the motion that the notices of *lis pendens* are null in so far as the properties acquired by respondent prior to the approval of Act No. 47 is concerned, because said notices would be authorized by Section 91 of the Code of Civil Procedure only over the provisions of Section 6 of the Quo Warranto Act of March 1, 1902, as amended by Section 2 of Act No. 47; and that said provisions of Act No. 47 are null and ineffective because (a) they establish penalties which did not exist when the immovables were acquired, making the law *ex post facto* and as such prohibited by the Organic Act in its second section; and (b) they deprive the respondent of the due process of law and the equal protection of the laws, by affecting contracts made and recorded prior to the approval of Act No. 47.

The other two respondents, The Fajardo Sugar Co. of Porto Rico and Loiza Sugar Company, have filed extensive briefs in support of the motion, and the complainant has objected to the cancellation requested.

The only legal question presented by this motion is: Are the provisions of Section 91 of the Code of Civil Procedure applicable to a state of facts and law such as is described in the complaint? After a

study of said question in the light of the jurisprudence established by this court, we must decide that they are applicable.

Said section, as it was translated into Spanish by this court in the case of *Manrique de Lara* v. *Registrar*, 23 P. R. R. 864, reads:

> "En una accion que afecte al titulo o al derecho de posesion de propiedad inmueble, el demandante al tiempo de presentar la demanda y el demandado al tiempo de formular su contestacion, cuando en dicha contestacion se solicite un remedio a su favor o en cualquier tiempo despues, pueden presentar para su anotacion al registrador del distrito en que este situada la propiedad o alguna parte de la misma, un aviso de estar pendiente la accion, que contenga los nombres de las partes, el objeto de la accion o defensa y una descripcion de la propiedad afectada por dicha accion . . ."

The language of the statute is very clear. It is not a necessary requisite, as the respondents claim, that a controversy between the parties exist as to the title or right to possession of an immovable property, nor that the plaintiff claim some right to the ownership or to the possession of the property, in order that a record be made of the notice of *lis pendens*. This Supreme Court has held in several decisions that all that is required is that the action exercised affect the title or right to possession. In *Manrique de Lara v. Registrar*, *supra*, this court said:

> "As will be seen, the English version does not exact as a condition for recording a notice of the complaint or answer that the plaintiff or defendant, as the case may be, pray that he be adjudged the owner of the property sued for; but, according to said version, it is sufficient that the action affect the title or the right of possession of real property."

The intention of the legislator in approving Section 91, *supra*, and Section 42 of the Mortgage Law was that when an action of the nature as the one in the instant case was exercised constructive notice could be given to third persons who may acquire the properties in dispute without express knowledge of the pendency of the suit, and

to avoid that such persons could claim later that they were innocent third persons. For the cautionary notice authorized by Section 42 of the Mortgage Law it is necessary that the complaint refer to real property or to some real right. For the record of a notice of *lis pendens* authorized by Section 91 of the Code of Civil Procedure all that is required is that the action affect the title or right of possession of real property. See *Manrique de Lara* v. *Registrar, supra*; *Velazquez* v. *Registrar*, 27 P. R. R. 250; *Morales* v. *Cruz*, 36 P. R. R. 216; *Padilla* v. *Registrar*, 39 P. R. R. 482; *Fernandez* v. *Registrar*, 45 P. R. R. ; and *Olivera* v. *Registrar, ante*, p.

In the case before us there is an action pending and is based on that The People of Puerto Rico, which is the complainant, granted to The Fajardo Sugar Company of Porto Rico and to the Loiza Sugar Company of Porto Rico articles of incorporation by which both corporations accepted and expressly submitted themselves to the limitation provided for by the Joint Resolution of Congress of May 1, 1900, by which they are prohibited to possess or control lands in excess of 500 acres; and that the other respondent requested and obtained a license to do business in Puerto Rico, accepting and submitting to said limitation; and that in violation of said joint resolution and of their articles of incorporation, the said three entities, by means of a common plan, formed and executed with the purpose of violating the law, control and possess some 23,800 acres of land. It is also alleged in the complaint that The Fajardo Sugar Growers' Association is a subsidiary of The Fajardo Sugar Co. of Puerto Rico; and that the latter is the true owner of said lands. A simple reading of the complaint is sufficient to convince us that the pending action affects the title and the right of possession of the real property with respect to which the notice of *lis pendens* has been recorded. The complaint is hence entitled to have the notice of *lis pendens* remain of record in the registry until the termination of the suit, that is until it is determined by a judgment of this court whether the respondents have a valid title or whether they have a right to continue in the possession and control of the 23,800 acres of land in spite of the statutory prohibition.

We do not find that the difference which the respondent tries to establish in favor of the properties which it claims were acquired by

it prior to said acts number 33 and 47 of 1935 is justifiable. When the three respondents were organized and obtained a license to do business in this Island, the joint resolution of May 1, 1900, the law of March 1, 1902, establishing quo warranto proceedings (Session Laws, p. 87, Comp. 407–471) were already in effect in this Island. entitled an Act to establish a law of private corporations (Session Laws, p. 87, Comp. 407–471) were already in effect in this Island. And said laws by themselves would be sufficient to support the action exercised in this proceeding, in accordance with our decision of June 4, 1936.

We think it is unnecessary for us to discuss again the questions raised by respondent relating to the validity and constitutionality of said Acts Nos. 33 and 47 of 1935. Said questions were considered and decided, in so far as we considered necessary to decide them, by the decision of the motion as to jurisdiction which opinion we rendered on June 4, 1936 (50 P.R.R.) and by which we abide.

For the reasons stated the motion requesting the cancellation of the record of notice of *lis pendens* is overruled.

MARTIN TRAVIESO,
Associate Justice.

[Title omitted.]

EXCEPTION OF RUBERT HERMANOS, INC., TO THE ORDER ENTERED BY THIS HONORABLE SUPREME COURT OF PUERTO RICO ON JULY 13, 1937, OVERRULING THE DEMURRERS TO THE AMENDED COMPLAINT.

[Filed July 19, 1937.]

To the Honorable Supreme Court:

Now comes the defendant herein, by its undersigned attorneys, and respectfully excepts to the order of this Honorable Supreme Court of Puerto Rico of July 13, 1937, overruling the demurrers filed by this defendant to the amended complaint, and prays that this exception be admitted for proper purposes.

San Juan, Puerto Rico, July 19, 1937.

JAIME SIFRE, JR.,
HORACIO FRANCESCHI,
Attorneys for the Respondent.

[Title omitted.]

EXCEPTION OF RUBERT HERMANOS, INC., TO THE ORDER OF THE HONORABLE SUPREME COURT OF PUERTO RICO OF JULY 13, 1937, DISMISSING THE MOTION REQUESTING THE CANCELLATION OF THE *LIS PENDIS*.

[Filed July 19, 1937.]

To the Honorable Supreme Court:

Now comes the defendant herein, by its undersigned attorneys, and respectfully excepts to the order of this Honorable Court of July 13, 1937, overruling the motion presented by this defendant requesting the cancellation of the *lis pendens*. The respondent prays that this exception be admitted for all proper purposes.

San Juan, Puerto Rico, July 19, 1937.

J. SIFRE, JR.,
HORACIO FRANCESCHI,
Attorneys for the Respondent.

[Title omitted.]

EXCEPTION OF RUBERT HERMANOS, INC., TO THE ORDER ENTERED BY THE SUPREME COURT OF PUERTO RICO ON JULY 13, 1937, OVERRULING THE MOTION TO STRIKE OUT FROM THE AMENDED COMPLAINT.

[Filed July 19, 1937.]

To the Honorable Supreme Court:

Now comes the defendant herein, by its undersigned attorneys and respectfully excepts to the order entered by this Honorable Court on July 13, 1937, overruling the motion to strike out from the amended complaint filed by the defendant and prays that this exception be admitted for all proper purposes.

San Juan, Puerto Rico, July 19, 1937.

JAIME SIFRE, JR.,
HORACIO FRANCESCHI,
Attorneys for the Respondent.

[Title omitted.]

ANSWER OF THE DEFENDANT RUBERT HERMANOS, INC.

[Filed August 19, 1937.]

Now comes the defendant, Rubert Hermanos, Inc., through its undersigned attorneys and without waiving its demurrer to the jurisdiction of this court or its other demurrers filed in this proceeding and in answer to the amended complaint respectfully alleges and says:

I. It admits the averments made in paragraph (a) of the amended complaint.

II. Of the averments made in paragraph (b) of the amended complaint this defendant admits that among the purposes or objects which it was authorized by its Articles of Incorporation to pursue there are included that of devoting itself to agricultural pursuits in general; the purchase, development and management of enterprises having as their object the planting, cultivation and harvesting of sugar cane; the planting, cultivation and harvesting of sugar cane, in that way developing the lands in its possession, and purchasing and possessing estates and plantations, but this defendant alleges that the above are not the only objects or purposes for which it was incorporated, and that it was also authorized by its charter to engage in the Island of Puerto Rico or elsewhere in the manufacture of sugar, molasses, and other by-products of sugar, and to buy, sell, and in general to trade in sugar either raw or refined, in molasses and other by-products of sugar and to build up, purchase, own, lease or in any other way acquire, develop, promote, organize, handle, conduct and manage enterprises having for their aim and object the manufacture and sale of sugar either raw or refined, molasses and other by-products of sugar, and to erect, purchase or in any other way acquire centrals, mills, establishments or factories, with all the buildings, installations, annexes, accessories and implements necessary or suitable for the manufacture and preparation of sugar, molasses and other by-products of sugar. The defendant further alleges that by section 4 of its charter it was authorized to engage in any and every object of purpose as mentioned in the said section.

III. Of the averments made in paragraph (c) of the amended complaint it admits that subdivision "f" of the articles of incorporation provides, among other things, that the right of the corporation to own and control land in the Island of Puerto Rico shall be limited to five hundred acres only and that this right is "subject to the restrictions established by Section 3 of the joint resolution of May 1, 1900, approved by the Congress of the United States of America," but it contends that the five hundred acre limitation is applicable in the event that the defendant should wish to engage in "agriculture" as its main object and that the other restrictions of the said joint resolution of which mention is made herein are applicable to this corporation in the pursuit by it of the manufacture of sugar which is an industrial pursuit, and such restrictions prohibit it from holding or possessing real property except such as may be reasonably necessary to enable it to carry out the purposes for which it was created.

IV. In answer to the averments in paragraph (d) of the amended complaint, this defendant admits having been authorized to engage in agriculture, but it alleges that it was also authorized to engage in all or any of the purposes and objects mentioned in its charter, which also include the manufacture of sugar and molasses, which is a purely industrial pursuit. The defendant admits that according to its charter "the right of the corporation to own and control land in the Island of Puerto Rico shall be limited to five hundred acres only, and subject to the restrictions established in Section 3 of the Joint Resolution of May 1st, 1900, as approved by the Congress of the United States of America;" but it alleges that the restriction or prohibition in regard to ownership and control of not more than five hundred acres does not apply to this defendant as regards the authority expressly given to it by the franchise granted it by The People of Puerto Rico to engage also in industrial objects and purposes, jointly with the other objects or purposes or to the exclusion of anyone of them. This defendant alleges that among the various purposes for which it was incorporated under the express authority of its franchise it chose as its main purpose or object the manufacture and production of sugar and molasses for sale in the Island and in

Continental United States, and to this end it acquired a sugar central or factory generally known as "Central San Vicente", located in the municipal district of Vega Baja, in this Island, with machinery, equipment, annexes, private railway, telephone system and other holdings and properties required for the manufacture of sugar and molasses; that from time to time this defendant has made improvements on said factory to such an extent that it has now become a modern factory equipped with the means of turning sugar cane into raw sugar and molasses. This defendant further alleges that the said factory has capacity for grinding during each grinding season or industrial year as much as 350,000 tons of cane; that this defendant for the purpose of securing part of the raw materials necessary to enable it to engage in the manufacture of sugar and in the sugar industry, and making use of an implied and incidental faculty or power, also acquired the land reasonably necessary in order to obtain therefrom, through the planting and cultivation of sugar cane, part of the sugar cane which it must grind during each grinding season in its industry of manufacturing sugar and producing sugar and molasses, and that the land thus acquired for this purpose and object does not furnish all the cane needed to be ground in each grinding season or industrial year; that the defendant could not engage in the manufacture of sugar upon an efficient and economic basis if it had to depend entirely on the cane that might be purchased from planters and other persons; that this defendant must count during each grinding season or industrial year upon a minimum of cane of its own or grown by it in order to be able to operate and run its business in an economic and efficient manner and that the lands acquired and owned by it at present are those which it indispensably and reasonably requires in order to obtain part of the raw material, without which it could not engage in the manufacture of sugar and molasses on an economic and efficient basis; this defendant alleges that in engaging, as it has done, in the manufacture of cane sugar and molasses, through the acquisition, within its implied and incidental powers, of the land reasonably necessary to enable it to carry out the above purpose, that is, to obtain part of the raw material, it has not violated either its franchise or the joint resolution of May

1, 1900, nor any part or provision whatever of said franchise or of the said joint resolution.

In answer to the averments made in paragraph (e) of the amended complaint, this defendant admits that it owns and controls the lands mentioned in said paragraph (e), but denies to be engaged in agriculture on said lands or on any part thereof, as a principal corporate object or purpose, and on the contrary alleges that it devotes part of said lands, using the incidental and implied power which it has, to the planting and cultivation of sugar cane as a means of obtaining part of the raw material, viz, sugar cane which is indispensable to this defendant in its industry of manufacturing and producing for sale, sugar and molasses, which is the principal object or purpose to which this defendant devotes itself and has devoted itself ever since it started in business, and without such raw material this defendant would be unable to engage in the manufacture of sugar. This defendant alleges that part of its lands are used for roads and other requirements of the corporation; that the defendant's factory as well as other buildings are erected thereon and that not all of said lands are suitable for growing cane, nor are they all devoted to the growing of cane.

VI. In answer to the averments made in paragraph (f) of the amended complaint, this defendant denies that the holding or control of lands owned by the defendant or of any part thereof is or ever has been contrary to the public policy of The People of Puerto Rico; it denies that the ownership or control of its lands or any part thereof is or has ever been in conflict with the material well being of The People of Puerto Rico.

In answer to the averments made in subdivision (1) of paragraph (f) of the amended complaint, this defendant denies that Joint Resolution No. 23 of the 56th Congress, 1st Session, approved on May 1, 1900, or any part thereof, sets or has set forth or enuniciated any public policy forbidding the concentration of land in large holdings by corporations, and alleges on the contrary that the limitation imposed by such law on the holding and control of not more than five hundred acres solely and exclusively refers to the concentration of large holdings by agricultural corporations, other non-agricultural cor-

porations being allowed or authorized by the said joint resolution to own and hold as much real property as is reasonably necessary to enable them to carry out the purposes for which they are created, and the defendant alleges that such non-agricultural corporations may, without incurring in the violation of any statute, control and own large tracts of land if that is reasonably necessary to enable them to carry out their purposes. This defendant alleges that non-incorporated associations as well as civil partnerships, trusts and other non-corporate companies and entities may, without incurring in any violation of any law, own and control in this Island land in large holdings and that as a matter of fact partnerships and other unincorporated companies own and control in Puerto Rico large tracts of land. This defendant denies that any public policy against the holding or control of land concentrated in large tracts has been affirmed or strengthened by the authorities or by any of the governmental officers of The People of Puerto Rico, although it is admitted by this defendant that the present attorney general and some other officers have gone on record as opposed to the holding or control of land in excess of five hundred acres. This defendant, however, alleges, on information and belief, that more than thirty years elapsed after the passage of said joint resolution without The People of Puerto Rico taking any action in the courts involving the holding or control of land by corporations, and this defendant further alleges, on information and belief, that for more than thirty years The People of Puerto Rico has, by its inaction, tolerated and consented to the holding and control of large tracts of land by sugar corporations, it being aware of the number of *cuerdas* of land possessed by such corporations, upon which is collected taxes, licenses and other imposts.

This defendant denies that any public policy has been affirmed or strengthened by House Bill No. 13 of the 13th Legislature, Second Special Session, of June 26, 1935, or by Senate Bill in substitution of House Bill No. 13, of the 13th Legislature, Second Special Session, nor by the aforesaid Resolution of the Insular Senate of February 13, 1930, or by any of the aforesaid bills; and it, on the contrary, alleges that said Senate bills and resolution never did or could set up any public policy of The People of Puerto Rico against

the holding or control of lands concentrated in large holdings, or in any other sense or manner, as said bills or resolution were never enacted into laws. For lack of information and belief to enable it to answer if the said substitute Senate bill was vetoed by the Governor of Puerto Rico on the ground, that in his opinion, it was insufficient to establish the so-called public policy which it claims to declare, or any other policy, this defendant, therefore, denies said allegation in whole and in part, and on information and belief, denies that Act No. 33 of July 22, 1935, or Acts Nos. 47 and 48 of August 7, 1935, or Act No. 44 of August 6, 1935, or any of said Acts or part thereof, express the so-called public policy referred to by plaintiff. This defendant further alleges that the said Acts Nos. 44 and 48 of August 6 and 7, 1935, respectively, refer to amendments to the Eminent Domain Act of 1903 in the event that any general plan of reconstruction "be first approved by the Finance Committee of the Legislature of Puerto Rico," and to the imposition of penal sanctions by district courts for violations of the provisions of the Joint Resolution of Congress of May 1, 1900.

In answer to the averments made in subdivision 2 of paragraph (f) of the amended complaint, this defendant admits that Puerto Rico has an area of 3,435 square miles or some 2,198,400 inhabitants; it likewise admits that the population of this Island according to the 1930 census was 1,543,913 inhabitants and that the number of people per square mile went up from 325.5 persons in 1910 to 378.4 in 1920 to 449.5 in 1930, and this defendant denies all the other particulars set out in subdivision 2 of paragraph (f) of the amended complaint in general and each of them in particular for lack of information and belief.

For lack of information and belief this defendant can not answer the averments made in subdivision 3 of paragraph (f) of the amended complaint and it therefore denies all such matter and particulars in general and each of them in particular.

AS NEW MATTER AND AS SEPARATE AND SPECIAL DEFENCES, THIS DEFENDANT RESPECTFULLY ALLEGES AS FOLLOWS:

1. That of the several purposes or objects for which it was incorporated and expressly authorized by its franchise, this defendant chose as its main purpose or object the manufacture and production of sugar and molasses in the Island of Puerto Rico to be sold in this Island and in the continental United States and for this purpose it acquired a sugar central or factory located in the municipal district of Vega Baja of this Island, with machinery, equipment, annexes, a private railway, a telephone system and other articles and properties required for manufacturing sugar and molasses; that the sugar and molasses manufactured by this defendant in its factory are obtained from sugar cane without which this defendant could not and can not manufacture in said factory sugar and molasses; that in order to obtain and secure at least part of the raw material indispensable for operating and running its factory and to be able to engage in the sugar industry, upon an economic and efficient basis, availing itself of the incidental or implied power which it has, it likewise acquired the land reasonably necessary to enable it to engage in the manufacture of sugar and molasses and to meet other needs of the business or undertaking of this corporation, in which it has invested several million dollars and without which it could not engage in the said business; that it derives from part of such land, through the planting and cultivation of sugar cane, part of the cane required to be ground in each grinding season or industrial year so that this defendant may run and operate its central or sugar factory on an efficient and economic basis, and that the remaining sugar cane needed in each grinding season or industrial year is obtained by this defendant by purchase from several planters who sell their crops to it; that this defendant would be unable to engage in the industry of manufacturing sugar on an efficient and economic basis if it had to depend entirely on the sugar cane that it might purchase; that this defendant must have canes of its own or grown by it in order to be sure of at least part of the canes which it must grind during each grinding season or industrial year. This

defendant further alleges that out of about 183,968.92 tons of canes ground in its factory during the grinding season or industrial year of 1935, about 116,370.12 came from planters and the remainder from canes grown on land of this defendant; that during the grinding season or industrial year of 1936, about 240,343.50 tons of canes were ground in its factory, of which about 147,586.66 came from planters and the remainder from canes grown on land of this defendant; that during the grinding season or industrial year of 1937, about 292,468.14 tons of canes were ground in its factory, of which about 169,134.38 tons came from planters and the remainder from canes grown on land of this defendant, and that in none of these years did the defendant have the number of tons of canes required for running defendant's factory at full capacity.

2. This defendant alleges that the Joint Resolution of Congress which in Section 3 provides for restrictions in regard to the holding and control of lands by corporations was enacted in the year 1900; that since then and until recently, from time to time, various corporations have been organized in Puerto Rico to engage in the manufacture of sugar which is the principal and most important industry in the Island, upon which thousands of workmen and laborers depend for their subsistence, and that many of such corporations, according to the information and belief of the defendant, gradually acquired real property in excess of the five hundred acres in order to grow thereon the amount of sugar cane necessary and indispensable for manufacturing sugar and molasses; that many millions of dollars have been invested in the sugar industry in Puerto Rico and that many of the corporations engaged in such industry have issued and sold stock to residents and non-residents who acquired the same in good faith. The defendant alleges, on information and belief, that The People of Puerto Rico tolerated, allowed and encouraged the development of the sugar industry during all these years until it reached the present stage; and this defendant further alleges, upon information and belief, that never during all that time were any proceedings brought challenging or questioning the right of a sugar corporation to own and control more than five hundred acres, provided this was reasonably necessary in order to obtain the raw ma-

terial for the purpose of manufacturing and producing sugar and to engage in the sugar industry; that The People of Puerto Rico collected and still collects taxes upon the property of such corporations, as well as other taxes and imposts, and that through the Government's officers, departments and other agencies it always had or could have had information as to the land acquired by most of the corporations engaged in the sugar industry, and that in spite of that it was not until 1936 when, according to the information and belief of this defendant, The People of Puerto Rico for the first time brought proceedings questioning or challenging the right of a corporation, engaged like this defendant in the sugar industry, to hold or control land in excess of five hundred acres, whenever this was necessary in order to obtain the raw material or part thereof, that is, sugar cane, to be ground in its factory; that this defendant acquired the sugar central or factory, as well as practically all the lands which it owns, in 1927 and that since then this defendant has been using the factory and its lands in the business of manufacturing cane sugar and molasses, getting from some of said land part of the raw material required for such manufacture or industry, namely, sugar cane, and that during all these years this defendant has done so publicly, its lands being recorded in its name in the registries of property in the Island of Puerto Rico, with the knowledge of the officers and departments of the Government of Puerto Rico, it having paid during all these many years to the Government of Puerto Rico taxes on its properties, including its lands, as well as other taxes and imposts without the Government of Puerto Rico or any of its departments or agencies objecting, until these proceedings were brought, to the business of this defendant or to its owning or controlling land in excess of five hundred acres in order to provide itself with canes to be ground in its factory, for which reason the plaintiff, because of its acquiescence and delay in suing, is barred from cancelling the franchise of this corporation.

For the foregoing reasons this defendant respectfully prays the

court to dismiss, in due course of law, the amended complaint filed by The People of Puerto Rico in the present case.

San Juan, Puerto Rico, August 19, 1937.

JAIME SIFRE, JR.,
ORLANDO J. ANTONSANTI,
Attorneys for the Defendant.

I, Jose Gonzalez Hernandez, declare and state on oath: That I am of age, married and a resident of Santurce, in the municipality of San Juan, P. R.; that I am vice-president and director of the domestic corporation named Rubert Hermanos, Inc., defendant herein; that as such vice-president and director I am acquainted and familiar with the affairs and business of the defendant corporation; that I have read the foregoing answer and that the facts therein stated are true as they are known to me personally, except where they are alleged in the said answer on information and belief, which I also believe to be true, and that this oath is not taken by Rubert Hermanos, Inc., as being a corporation and the same is taken by affiant as its vice-president and director.

JOSE GONZALEZ HERNANDEZ.

Affidavit No. 1053.

Sworn to and subscribed before me by Jose Gonzalez Hernandez, of age, married, property owner and a resident of Santurce, in the municipality of San Juan, P. R., vice-president and director of the domestic corporation Rubert Hermanos, Inc., and who is personally known to me.

San Juan, P. R., August 19, 1937.

RAMON C. JULIA,
Notary Public.

Served with copy this nineteenth day of August, 1937.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

[Title omitted.]

ORDER OF SUPREME COURT OF PUERTO RICO.

[San Juan, Puerto Rico, January 27, 1938.]

Considering the aforegoing motion it is ordered that the trial of this case be held on March 7, 1938, at 10 A.M.

It was ordered by the court as witness the signature of the chief justice.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

MINUTES OF HEARING.

In San Juan, Puerto Rico, at 10 A. M. of March 7, 1938, and before the Supreme Court of Puerto Rico, composed by Chief Justice del Toro and by Associate Justices Wolf, Hutchison and Travieso, was begun the hearing of quo warranto proceeding number 2, brought by The People of Puerto Rico, as petitioner, against Rubert Hermanos, Inc., as respondent. The following attorneys appeared: Attorney General Benigno Fernandez Garcia, Miguel Guerra Mondragon, Rafael Rivera Zayas, Luis Venegas Cortes, R. Baragano, Jr., and R. Fernandez Garzot for the petitioner, Jaime Sifre and O. J. Antonsanti for the respondent. Attorney Henry A. Hirshberg, general counsel of the Puerto Rico Reconstruction Administration, also appeared accompanying the attorneys for The People. The attorney general presented this attorney to the court and stated that Mr. Hirshberg does not appear as attorney of record.

The parties set forth their theory of the case according to their respective points of view, and the plaintiff, authorized by the court, began the production of documentary evidence and oral testimony. At 12 M. the court adjourned until 2 P. M.

Once the production of evidence for the petitioner ended, the respondent presented a written motion requesting the dismissal of the complaint; and the same was overruled. The respondent took an ex-

ception and said that for the reasons stated in the motion requesting the dismissal of the complaint, it chose not to present any evidence.

The court granted the following terms to file briefs: fifteen days to the petitioner; fifteen days to the respondent to answer; five days to the petitioner to file counter-brief and five days to the respondent to reply to plaintiff's counter-brief.

After this the court adjourned.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

Approved:

EMILIO DEL TORO,
Chief Justice.

[Title omitted.]

BILL OF EXCEPTIONS.

Be it remembered that this cause came on for hearing on its merits before the Supreme Court of Puerto Rico, sitting at San Juan, Puerto Rico, on the seventh day of March, 1938, the court being constituted by Chief Justice del Toro and Associate Justices Wolf, Hutchison and Travieso; petitioner, The People of Puerto Rico being represented by Benigno Fernandez Garcia, Attorney General of Puerto Rico, Miguel Guerra Mondragon, Rafael Rivera Zayas, Rafael Baragano, Jr., Rogelio F. Fernandez Garzot and Luis Venegas Cortes, and the respondent, Rubert Hermanos, Inc., by Jaime Sifre, Jr. and Orlando J. Antonsanti.

Whereupon the hearing of the case commenced and evidence was introduced and proceedings were had as follows:

Petitioner's Evidence.

Attorney General: We offer to the court as illustrative evidence Volume 33 of the Congressional Record, parts 1, 2, 3, 5 and 8.

Chief Justice: Any objection?

Mr. Sifre. What is the object of presenting the Congressional Record?

Attorney General: The object is to establish with the debates of Congress in 1900, the public policy attempted to be put in practice in Puerto Rico in approving this resolution.

Mr. Sifre: We object to the admission of this evidence on the ground that the debates of a legislative body are admissible only when there is an ambiguity in the law; when the law is clear they are not admissible. I object to the admission of the evidence because in my opinion all the averments of the complaint are totally immaterial and irrelevant. The so-called public policy has nothing to do with this proceeding and any evidence presented in connection with those averments is, in our opinion, irrelevant.

Attorney General: In our opinion, it is pertinent. (He reads authorities.) That is the weight of authorities. And it is clear that the public policy is a fundamental question.

Chief Justice: The court allows the evidence.

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be taken.

Attorney General: We shall set forth what parts of the Congressional Record we wish to present in evidence:

Volume 33, part 1, page 630.
Volume 33, part 2, page 1940.
Volume 33, part 2, page 1942.
Volume 33, part 2, pages 2088, 2009.
Volume 33, part 3, page 2273.
Volume 33, part 3, page 2402.
Volume 33, part 3, page 2412.
Volume 33, part 3, page 2414.
Volume 33, part 3, page 2415.
Volume 33, part 3, page 2416.
Volume 33, part 3, page 2483.
Volume 33, part 3, page 2649.
Volume 33, part 3, page 2695.
Volume 33, part 8, Appendix, page 204.
Volume 33, part 8, Appendix, page 219.
Volume 33, part 8, Appendix, page 274.
Volume 33, part 8, Appendix, page 665.
Volume 33, part 5, page 4613.
Volume 33, part 5, page 4616.
Volume 33, part 5, page 4617.

Volume 33, part 5, page 4618.
Volume 33, part 5, page 4619.
Volume 33, part 5, page 4620.

Attorney General: As part of the public policy of The People of Puerto Rico we shall offer in evidence the 30th Annual Report of the Governor of Puerto Rico, Honorable Theodore Roosevelt to the Secretary of War, dated August 21, 1930. From this report we offer two paragraphs, that is, the last paragraph on page 4, ending on page 5, and the first paragraph of page 5, which reads:

"Economically, our condition was equally bad. More than 60 percent of our people are out of employment either all or a part of each year. The average yearly income of the working man or woman ranges between $150 and $200. Hundreds come to the government offices weekly, with but a single request—work. They do not ask for a dole, merely the opportunity to earn a livelihood. This condition has been brought about by a number of different factors. To begin with, we have a population of 440 to the square mile. That means that we must practice intensive agriculture. In Porto Rico the lowlands are held in large measure in big farms, either by companies or individuals. We have too few small farmers. This condition is not new. It has always existed to a large extent, though now it is worse. In the last century much of the property was owned in Spain. Now much is owned by sugar companies in the continental United States, though some is still owned in Europe.

"It is axiomatic that the small farm holder is the basis of society. Our endeavor, therefore, must be to aid such as exist and to strive to put back on the land again on farms owned by themselves, as many of our people as possible."

We offer those paragraphs in evidence.

Mr. Sifre: We object to the admission in evidence of the copy of the 30th Annual Report of the Governor of Puerto Rico, Honorable Theodore Roosevelt, offered by the attorney general, because the document . . .

Attorney General: We wish to clear up that we are not offering

it in evidence, but simply to enlighten. We maintain that the court takes judicial notice of the annual reports rendered by the Governor to the President of the United States.

Mr. Sifre: We object to the admission of the document offered by the Attorney General because the same is immaterial and irrelevant; secondly, because the public policy of a country is that appearing from its laws and statutes and not that established by the governors and other public officers. In the third place, because the so-called public policy is immaterial and irrelevant in this proceeding.

Chief Justice: Admitted over the objection of the respondent. The clerk will mark the various books of Volume 33 of the Congressional Record as Plaintiff's Exhibit 1, letters A, B, C, D, and E, and this other report of the Governor as Plaintiff's Exhibit 2.

Mr. Sifre: I wish to take an exception to the ruling of the court admitting in evidence the Governor's report.

Chief Justice: Let the exception be entered.

Attorney General: I had forgotten that besides that paragraph on page 4 of the 30th Annual Report of the Governor of Puerto Rico, there is another paragraph in the same report, a very short one, appearing on page 9, which I shall also present to enlighten. It reads thus:

> "Due to the density of the population, the Government of Porto Rico had hardly any public land, and such as was suitable for farming has now been exhausted. We therefore decided to extend the scope of the Commission by buying cheap land from large holders and using it for homesteading purposes. We accordingly provided an issue of $500,000 worth of bonds in the last Legislature for this purpose."

Mr. Sifre. I object to the admission as part of the record, of the paragraph just read by the attorney general from the 30th Annual Report of the Governor of Puerto Rico, Honorable Theodore Roosevelt, for the reasons stated by me in objecting to the admission of the report the first time.

Chief Justice. It is admitted, and let an exception be entered in favor of the opposite party.

Attorney General: We also wish to present for the enlightment of the court the 31st Annual Report of the Governor of Puerto Rico, Theodore Roosevelt, to the Secretary of War, dated at the Government House, San Juan, Puerto Rico, September 1, 1931, as regards the paragraph which we shall read, appearing at the bottom of page 7 and ending on page 8. It reads:

> "We feel that one of the basic troubles in Porto Rico lies in the fact that so much of the land, especially on the coastal plain, has gravitated into the hands of a comparatively small number of large landholders. We regard as basic the principle that the country is happiest which is populated by farmers living on and cultivating the land which they own. Our policies therefore, have been specifically directed towards the building up of the small farmers. Wherever possible, we have directed governmental machinery to this end. Part of this work has been carried on through the schools, where we are turning our attention to the training of the children, and where we hope to be able to extend the work in certain phases to the surrounding adults; part through the Department of Agriculture, wherein we are directing our policy towards the pushing of education in such crops as lend themselves most readily to profitable cultivation on small properties."

Mr. Sifre: We object to the admission in evidence of that part read by the attorney general from the Report of Governor Theodore Roosevelt of the year 1931, as immaterial and impertinent, for the reasons already stated by me and on record when I objected to the 30th Annual Report of the Governor admitted in evidence and marked Exhibit 2.

Chief Justice: Admitted, and let it be marked "Exhibit 3".

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: We also offer to enlighten, the Annual Report of the Secretary of the Interior of the United States for the fiscal year ending June 30, 1937, pages 327, 328 and 329 up to the end of the first paragraph on page 330. As this report will remain in the

hands of the clerk, and in order not to have to read it, if the court so authorizes, the stenographer may write in the record the word "copy" and then copy the report later.

Mr. Sifre: We object to the admission in evidence of the document just offered by the Attorney General of Puerto Rico, as the same is immaterial and irrelevant.

Chief Justice: Admitted, and let it be marked plaintiff's Exhibit 4.

Mr. Sifre. I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: For the enlightment of the court, we offer the opinion rendered by the Supreme Court of Puerto Rico in Compania Azucarera de la Carolina *v.* Registrar of Property of San Juan, 19 P. R. R. 143. The opinion was delivered through Mr. Justice Wolf We offer it to show the public policy, that the Government of Puerto Rico has never failed to raise this problem.

Mr. Sifre: We object, as we believe that this decision is impertinent and irrelevant to the question in controversy herein, and, moreover, because the so-called public policy has nothing to do with this proceeding.

Chief Justice: Let us identify it: Exhibit 5, opinion appearing at page 143 of Volume 19 of the Puerto Rico Reports.

Mr. Sifre: We wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: We wish to present, to enlighten the court, the opinion delivered by the Supreme Court of Puerto Rico in Compania Azucarera del Toa *v.* Registrar of Property, 19 P. R. R. 724. That was a case dealing with the holding of lands by corporations.

Mr. Sifre: The same objection made by us as to the admission of the opinion of this court admitted at the request of the attorney general.

Chief Justice: Admitted over the objection of the defendant.

Mr. Sifre: We wish to take an exception.

Chief Justice: Let the exception be entered and the document marked Exhibit 6.

Attorney General: We wish to present to enlighten to the court with regard to the public policy, the opinion of the Supreme Court of

Puerto Rico in La Isabella Grove, Inc. *v.* Registrar of San Juan, 24 P. R. R. 240.

Mr. Sifre: I object to the admission of the document as immaterial and irrelevant and for the same reasons stated when I objected to the two opinions of this court offered by the attorney general as illustration.

Chief Justice: Admitted, and marked Exhibit 7.

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer in evidence the opinion delivered by the Supreme Court of Puerto Rico in Porto Rican Leaf Tobacco Co. *v.* Registrar of Caguas 24 P. R. R. 245.

Mr. Sifre: I object because this opinion of the Supreme Court of Puerto Rico is immaterial and irrelevant in so far as the questions involved in this proceeding are concerned, and for the reasons already stated.

Chief Justice: Admitted and marked Exhibit 8.

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: To enlighten to the court, we offer in evidence the opinion delivered by the Supreme Court of Puerto Rico in Baetjer et als., as trustees of the Eastern Sugar Associates of Baltimore, Maryland, and The N. ional City Bank of New York, against the Registrar of Guayama, 48 P. R. R. . . .

Mr. Sifre: We object to the admission in evidence of the opinion just cited by the attorney general, as immaterial and irrelevant, for the reasons already stated.

Chief Justice: Admitted and marked Exhibit 9.

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: We wish to present in evidence, to enlighten the court, the decision of the Public Service Commission in the matter of the petition of the United Porto Rican Sugar Company to draw water from the Humacao River for irrigation purposes. Case F-319A. This decision appears in the annual report of the Public Service Commission of Puerto Rico to the Honorable Governor of Puerto Rico

and to the Honorable Senators and Representatives of the Legislature of Puerto Rico for the fiscal year 1930–1931, pages 177–186. This report is rendered every year by the Commission in accordance with the law.

Mr. Sifre: We object to the admission of the annual report of the Public Service Commission to the Governor of Puerto Rico, for the fiscal year 1930–1931 as the same is entirely irrelevant and immaterial to the questions at issue.

Chief Justice: Admitted and marked Exhibit 10.

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: We wish to present, to enlighten the court, Bill No. 13 of the House of Representatives of Puerto Rico, thirteenth Legislature, Second Special Session of June 26, 1935, approved by the House of Representatives of Puerto Rico. We have here a certificate issued by Antonio Arroyo, as Secretary of the House of Representatives of Puerto Rico, under the official seal of the House of Representatives of Puerto Rico, wherein he states that the twelve attached typewritten sheets are true copy of the bill of the House.

Mr. Sifre: I object to the admission in evidence of the document just offered by the Attorney General of Puerto Rico, first, because the same is immaterial and irrelevant—I maintain that the so-called public policy has nothing to do with this case—and in the second place, because the public policy of a country is established by its laws and statutes, but not by bills which never became laws and which cannot express anything else than the personal criterion of the legislator presenting it.

Chief Justice: The court holds that the document is not admissible in evidence.

Attorney General: I respectfully pray the reconsideration of the order of the court and I shall commence by reminding the court that paragraph one of averment "f" reads: "The public policy of The People of Puerto Rico against the holding and control of land in large estates by organized companies. . . ." [keeps on reading]. In this case as in the case of The Fajardo Sugar Company, the respondent prayed that this averment be stricken out and the court, by an order

of recent date, overruled the motion to strike out that fact and hence the court considered that it was a material and pertinent averment. Moreover, I wish to call the attention of the court to the fact that the court takes judicial notice of contemporaneous facts of general knowledge; that the court takes judicial notice of current history and economic conditions [keeps on reading]. This bill went to the Senate. The Senate approved a substitute bill and the bill approved by the Senate was sent to the Governor and vetoed by him. And the court takes judicial notice of the veto of a law by the Governor. We have precedents to that effect.

Justice Travieso: What is the date of that bill?

Attorney General: 1935. It was vetoed by the Governor because the same was not ample enough to cover the policy therein declared.

Mr. Sifre: I wish to state that I object to the reconsideration requested by the Attorney General of the ruling by the court refusing to admit a bill which never became a law.

Justice Travieso: Was not the Quo Warranto Law granting jurisdiction to this court to entertain these cases approved by the same Legislature which passed the bill vetoed by the Governor?

Attorney General: The same year.

Chief Justice: As it has been set forth that the document the presentation of which in evidence has been attempted with the object of showing the public policy of The People of Puerto Rico in the matter, is connected with others in the same situation, and as it is four minutes to twelve, the court shall study from now until 2 P. M. the decision to be rendered.

Attorney General: I acquiesce. I withdraw the evidence. I shall present the laws approved in that same session.

Chief Justice: The complainant is considered as having withdrawn said evidence, and the hearing is postponed until 2 P. M.

HEARING OF MARCH 7, 1938, AT 2 P.M.

Attorney General: We wish to offer, to enlighten the court, Act Number 33 of the Special Session of the Thirteenth Legislature of Puerto Rico, approved July 22, 1935. This is in connection with the second paragraph of averment "f" of the information.

Mr. Sifre: We object to the admission of same as immaterial and irrelevant, and I wish to confess that this is the first time that an Act of a legislative assembly of the country wherein the court is sitting is offered in evidence for any object. How does the court rule?

Chief Justice: Admitted and marked Exhibit 11.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: We also wish to offer in evidence Act No. 47 approved by the Second Special Session of the Thirteenth Legislature, August 7, 1935.

Mr. Sifre: The same objection, as immaterial and irrelevant.

Chief Justice: Admitted and marked Exhibit 12.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer in evidence Act No. 45 approved August 7, 1935.

Mr. Sifre: We object as immaterial and irrelevant.

Chief Justice: Admitted and marked Exhibit 13.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer in evidence Act No. 44 of August 6, 1935, Thirteenth Legislature of Puerto Rico.

Chief Justice: Admitted and marked Exhibit 14.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: I also wish to offer, to enlighten the court, the Concurrent Resolution of the Legislative Assembly of Puerto Rico approved by the House and Senate on February 13, 1935. This copy has been certified by the Secretary of the Senate. The Resolution is entitled: "Concurrent Resolution to petition the Congress of the United States of North America to enact legislation amending the Organic Act of Puerto Rico in the sense of making extensive the prohibition contained in Section 3 of the joint resolution approved by said Congress on May 1, 1900, and ratified in Section 39 of the Organic Act of Puerto Rico approved March 2, 1917, relative to the holding of land in excess of five hundred (500) acres, not only in regard to the

entities called *corporations,* but also in regard to every person or entity, whether natural or artificial, which, in the same manner as the corporations, acquires or holds land in Puerto Rico; to petition the Honorable Santiago Iglesias, Resident Commissioner for Puerto Rico in the United States, to work for the passage of such measure as well as of any other measure making more effective the application of the provisions contained in our Organic Act in regard to such prohibition, and for other purposes." This is a certificate duly signed by Mr. Colon Gordiany, Deputy Secretary of the Senate, and has the official seal of the Senate of Puerto Rico.

Mr. Sifre: May it please the court. I object to its admission as immaterial and irrelevant.

Chief Justice: Admitted and marked Exhibit 15.

Mr. Sifre: I wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: Then we have finished with the paragraph relative to the public policy. We shall begin now with the second paragraph of the information, paragraph "f", with regard to the area and other agricultural and economic conditions of Puerto Rico.

Mr. Sifre: I wish to present the following motion: That an order be entered striking from the record each and every one of the documents presented by the attorney general as immaterial and irrelevant.

Chief Justice: Motion overruled.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: In the second paragraph of averment "f" of the information we allege that the total area of Puerto Rico is 3,435 square miles, that is, some 2,198,400 acres. This has been accepted by the respondent. There is, however, a clerical error in the answer to the information to which I wish to call the attention of the court in order that it may be amended. The respondent admits that the area of Puerto Rico is 3,435 square miles, that is 2,198,400 inhabitants.

Mr. Sifre: That is a mistake. We meant to say acres. We thank you for calling our attention.

Attorney General: We also allege in that paragraph that of the 2,198,400 acres that Puerto Rico has, 1,222,284 acres are arable lands.

The respondent has not denied that fact specifically in its answer and hence it must be understood that the same has been accepted; *a fortiori* I shall present some evidence.

Mr. Sifre: The answer speaks for itself.

Attorney General: We have here the census of Puerto Rico: agriculture, farms, agricultural properties, cultivated lands and animals. Census of the Puerto Rico Reconstruction Administration official document published by the Government Printing Office, Washington, D. C., in 1937.

Mr. Sifre: Now I wish to establish my position in general terms with regard to the evidence that the attorney general seeks to present under paragraph two of allegation "f" of the amended information. The court will remember that this was one of the paragraphs the elimination of which was requested by us as entirely impertinent. [Mr. Sifre continues argument.]

Chief Justice: The document presented by the attorney general is admitted and let it be marked Exhibit 16.

Mr. Sifre: We take exception.

Chief Justice: Let an exception be entered.

Attorney General: We alleged in this paragraph that in 1930 Puerto Rico had a population of 1,543,913 inhabitants and that its present population is 1,700,000 inhabitants, that is, an average of 494.9 persons per square mile, the density of population having increased from 325.5 persons per square mile in 1910 and from 738.4 in 1920 to 449.5 in 1930. These facts are accepted by the respondent. But we also allege that "of this population, 72.3 percent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence." These facts have been denied by the defendant, and with regard to them we shall offer some evidence; or rather we shall merely enlighten to the court. The court takes judicial notice. We have here the census of Puerto Rico of 1935; population, Bulletin number 1, Number and Distribution of Inhabitants. This census is the population to which the preceding census refers, prepared under the direction of the persons

that we have indicated and published by the Government Printing Office, Washington, in 1937.

Mr. Sifre: I object because the document is immaterial and irrelevant, for the reasons stated when we objected to the admission of the census offered by our colleague.

Chief Justice: Admitted and marked Exhibit 17.

Mr. Sifre: We wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General. We wish to call the attention of the court to Table number 2, on page 2, of the foregoing document. We allege in our information that the population of the rural zone of Puerto Rico was 72.3 percent and we have here that under the census of 1930, when the total population of Puerto Rico was 1,543,913 inhabitants, 72.3 percent resided in the rural zone. The number of people residing in the urban zone has decreased. We say this merely to call the attention of the court. Of this the court takes judicial notice. With regard to these facts we made the following averment: "The population of Puerto Rico in 1930 was 1,543,913 inhabitants and according to conservative estimates the present population amounts to 1,700,000, giving an average of 494.9 persons per square mile. This shows an increase of population from 325.5 persons per square mile in 1910 to 378.4 in 1920, and to 449.5 in 1930. Of this population 72.3 per cent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence." Let us now pass to paragraph 3 of averment "f", wherein we allege that of the aforesaid 1,222,284 acres of land fit for cultivation, some 251,000 acres, or something over one-fifth, are applied to the production of sugar. [Continues reading.] We allege that according to the census of the Puerto Rico Reconstruction Administration, Table 3, page 7, there are in Puerto Rico 6620 properties dedicated to the cultivation of sugar cane, with a total area of 758,834 acres. Of these properties 346,154 *cuerdas* were planted to sugar cane in 1935 and 299,939 *cuerdas* were cultivated;

46215 *cuerdas* were not cultivated. [Keeps on reading from the census.]

Mr. Sifre: In order to clear up my position also with regard to the evidence or to the documents that are being offered under paragraph 3 of allegation "f" of the amended information, we requested that the said averment be stricken out, as in our opinion the same is immaterial and irrelevant; and we object, of course, to the admission of all evidence or documents presented under this averment because in our opinion the same is immaterial and impertinent.

Chief Justice: Table number 3, appearing on page 7, with regard to the census of population in 1935, is admitted and marked Exhibit 18.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Mr. Sifre: We object to the admission of any evidence or document, or whatever it may be, under this allegation, as in our opinion, the same is entirely immaterial and irrelevant. I ask for a ruling by the court.

Chief Justice: The court rules that evidence may be presented in connection with this averment.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer in evidence in its entirety the report prepared by Professor Rafael Pico of the University of Puerto Rico, Consulting Geographer of the Puerto Rico Reconstruction Administration, entitled "The Agricultural Problems of Puerto Rico." We shall present it with the object of showing with Table 12 the number of acres owned, leased, the total production of sugar and the percentage of total production of sugar of four corporations, to wit, the South Porto Rico Sugar Company, Central Aguirre Associates, Fajardo Sugar Company of Porto Rico and The East Puerto Rico Sugar Company. This table shows that the total number of acres possessed is 129,524. [Keeps on reading]: The document is entitled "The Agricultural Problems of Puerto Rico", by Rafael Pico, Consulting Geog-

rapher, May 18, 1936. This is an official document of The Puerto Rico Reconstruction Administration, which is a governmental body.

Mr. Sifre: We object, as we understand that the document is immaterial and irrelevant. In the second place, because this document expresses the opinion of it author, a Professor of the University of Puerto Rico. Even assuming that it is a document prepared under the authority of the Puerto Rico Reconstruction Administration, we do not think that such a document is admissible. For these reasons, we object to its admission.

Attorney General: [Reads precedents to show that the document is admissible in evidence.]

Chief Justice: Admitted and marked Exhibit 19.

Mr. Sifre: We wish to take an exception.

Chief Justice: Let the exception be entered.

Attorney General: I have a special case on this same point with regard to the lands owned by a number of corporations. The case of The Fajardo Sugar Company. In this particular case, and in order that the court may notice how serious the problem is and the great land holdings in Puerto Rico, I am going to mention the lands possessed by The Fajardo.

Mr. Sifre: The Fajardo case has nothing to do with the case of Rubert Hermanos. We contend that Fajardo has no lands. I object as immaterial and irrelevant.

Attorney General: I am going to quote the exact words of an eminent attorney, Colonel Rigby, in the case of Rafael Sancho Bonet against Clarence Bowie, pending before the Circuit Court of Bosfon. [Keeps on arguing.]

Mr. Sifre: The position assumed by the attorney general is that the court must take judicial notice of how the sugar industry develops and works, and has brought to the consideration of the court the statements of Colonel Rigby, whom I admire—[continues to argue]. The attorney general has no right to prove in this proceeding the lands which in his opinion are held by Company H or B, which are not before the court in this case.

Chief Justice (Addressing the attorney general): What do you intend to offer in evidence?

Attorney General: May it please the court. Under paragraph 3 of the averment "f", the following is alleged: "Of such lands thus applied to the production of sugar, not less than 196,757 acres, or something over 72 percent, which is above 16 percent of the total area fit for cultivation, is owned or controlled by organized companies representing aggregate capital belonging almost exclusively to absent stockholders." On this point we offer in evidence Mr. Pico's Report. But we also have here the report of Farr & Company, the largest sugar brokers in New York. Mr. Sifre has this report also. [Keeps on arguing.]

Justice Travieso: What evidence does the attorney general have to show that the document states the truth?

Chief Justice: The court decides to admit the document as a book of reference and shall give it whatever weight it may have. Let it be marked Exhibit 20.

Mr. Sifre: I wish to take an exception and to ask once more that the document be stricken from the record, and I beg the court to rule again on the subject.

Chief Justice: The court ratifies its ruling on the admission of the document and orders that an exception be entered in favor of the respondent.

Attorney General: We offer it to show the increase that the Fajardo has had in its lands from 1934 to 1937. In Mr. Pico's Report it appeared that in 1934 it possessed 25,613 acres and in this manual (Farr's) it appears on page 23 that in 1937 it possessed 30,132 acres, or an increase in three years in its own lands of 4519 acres and in leased lands 20,011, there having been an increase in three years of 8011 acres in the leased lands.

Mr. Sifre: For the same reasons appearing on the record, we move that the statements of the attorney general with regard to a company which is not before the court be stricken out.

Chief Justice: As said statements are based on the data appearing in the reports offered to enlighten the court, we overrule respondent's motion.

Mr. Sifre: I take an exception.

Chief Justice: Let the exception be entered.

Attorney General: We have alleged that in Puerto Rico there is less than a *cuerda* of land fit for cultivation per person in the rural zone and this fact has been denied by the respondent. We shall prove it.

Mr. Sifre: We wish to state that in our opinion the allegation contained in the amended information, to which the attorney general has made reference, is immaterial and irrelevant, and so any evidence that may be offered in connection with that allegation.

Chief Justice: Let an exception be entered.

Attorney General: We wish to offer, to enlighten the court, the work entitled "Types of Agricultural Exploitation in Puerto Rico", prepared by the College of Agriculture and Mechanical Arts, Experimental Agricultural Station of the University of Puerto Rico, Section of Agricultural Economy, Bulletin Number 41, published in November 1935, in San Juan, by the Bureau of Supplies, Printing and Transportation, and prepared by Messrs. J. E. McCord, Jorge J. Serralles, Jr., and Rafael Pico. We shall present it in connection with Table Number 1, entitled "Comparison between the coefficient of arable lands and the population of Puerto Rico and other countries", wherein the population of Puerto Rico, the area of the Island in *cuerdas*, the *cuerdas* per person the arable lands per *cuerda* and the arable lands per inhabitant (*cuerda*) appear.

Mr. Sifre: We object, as in our opinion this information and this document are immaterial and irrelevant.

Chief Justice: Admitted and marked Exhibit 21.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer, to enlighten the court, page 2 of Mr. Pico's Report.

Mr. Sifre: We object because it is immaterial and impertinent; on the same grounds adduced when this document was presented in evidence a short while ago.

Chief Justice: Page 2 of the Report is admitted in evidence, and let it be marked Exhibit Number 22.

Mr. Sifre: We take exception.

Chief Justice. Let the exception be entered.

Attorney General: We allege that during the decade from 1920 to 1930 the area of all the properties in Puerto Rico, administered by their owners diminished 318,232 acres and the area of properties administered by managers increased 325,425 acres. The total area of lands in farms is approximately 1,979,474 acres and hence nearly one-sixth of the total area of farms had been transformed from farms administered by their owners to properties administered by managers in a single decade. This fact has been denied by the respondent.

Mr. Sifre: The same objection, that the evidence is immaterial and irrelevant.

Attorney General: This document [referring to the census of Puerto Rico of 1935, prepared by the Puerto Rico Reconstruction Administration] has been already admitted in evidence by the court and we wish to call its attention to what appears therein with regard to lands in Table number 4. I wish to offer in evidence Table number 4, page 8, of the census of Puerto Rico of 1935, agriculture.

Mr. Sifre: I object as immaterial and irrelevant, for the reasons already set forth.

Chief Justice: Admitted and marked Exhibit 23.

Mr. Sifre: I take exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer in evidence several parts of another report prepared by the Puerto Rico Reconstruction Administration, entitled "Report on the Sugar Industry in Relation to the Social and Economic System of Puerto Rico", by Esteban A. Bird, Chief Economic Research Section, January 23, 1937. This is an official document of the Puerto Rico Reconstruction Administration. Exactly the same as the document prepared by Rafael Pico.

Mr. Sifre: I object to this evidence as immaterial and irrelevant. Questions of social and economic order are not to be considered by the courts in a case such as this. For the reasons stated I object to its admission.

Chief Justice (Addressing the attorney general): Are you going to offer any special pages?

Attorney General: I am going to refer to special data.

Mr. Sifre: I am going to add to the objection made to the admission of the document offered in evidence, that the same has not be authenticated as provided by the Law of Evidence of Puerto Rico.

Attorney General: If the court has any doubt, we could summon Mr. Fairbanks or Mr. Esteves.

Chief Justice: Does the report have any earmarks of authenticity?

Attorney General: It is a mimeographed report prepared by the Puerto Rico Reconstruction Administration. It is an official report, of which this court takes judicial notice.

Chief Justice: The court, unless the document is duly authenticated, can not admit the same in evidence.

Attorney General: May I beg the court to allow me to summon Mr. Fairbanks?

Chief Justice: Do you think that the trial of this case could be finished this afternoon?

Mr. Sifre: In so far as I am concerned, I think the hearing may end very soon. I wish to state that I do not believe that Mr. Fairbanks will be able to authenticate this document. [Keeps on arguing.]

Chief Justice: The court adjourns for fifteen minutes.

[After adjournment.]

Attorney General: May it please the court. Mr. Fairbanks, Chief Administrator of the Puerto Rico Reconstruction Administration, is not in San Juan today. He is in Arroyo, at Central Lafayette, but we have brought here Mr. Esteban A. Bird, the person who prepared the report. We are going to put him on the stand.

Mr. ESTEBAN A. BIRD, a witness called by the petitioner, having been duly sworn, testified as follows:

Direct Examination by the ATTORNEY GENERAL.

My name is Esteban A. Bird and I am manager of the Puerto Rico Self-Help Corporation. I was in charge of the Division of Economic Research in the Puerto Rico Reconstruction Administration.

The document which you are showing me is a report on the sugar industry in relation to the social system of Puerto Rico, which was prepared by me as a public officer at the request of the Directors of

the Administration who wanted a survey on the problems of the sugar industry in relation to the economic system of the Island. The division of plans was ordered to make an investigation on the subject.

In 1928 I graduated from the University of Pennsylvania in political economy. After working for a year in New York I came down to Puerto Rico and have worked for three years with the Shell Company and the West India Oil Company. After that I went back to the University of Puerto Rico as professor, which office I held during five years and at the request of the Puerto Rico Reconstruction Administration I passed from the University to that entity where I have been Chief of the Economic Research Division. I graduated in political economy from the Wharton School of Finance, University of Pennsylvania.

Attorney General: This is the document that we offer, duly authenticated.

Cross Examination by Mr. SIFRE.

The report was prepared under my direction and I wrote it personally with the exception of two parts that were prepared by Professor Rafael J. Cordero, from the University of Puerto Rico, and by Rafael Pico. Both parts were revised by me.

Attorney General: We think the report has been authenticated and we offer certain parts of it.

Mr. Sifre: I reiterate my objection to the document, as immaterial and irrelevant.

Chief Justice: The document has been authenticated; the same is admitted and marked Exhibit 24.

Mr. Sifre: We take exception.

Chief Justice: Let the exception be entered.

Mr. Sifre: It is my duty to call attention to the fact that official documents should be authenticated in the manner prescribed by the Code of Civil Procedure. The keeper of the document is the person who should authenticate the same.

Redirect Examination by ATTORNEY GENERAL.

After preparing the report it was forwarded to the Administration of the Puerto Rico Reconstruction Administration and as far as I

know, it has only been prepared in this manner, in mimeograph. I do not know the exact number of copies that were prepared but I think there were more than ten.

Recross Examination by Mr. SIFRE.

Ever since I was a boy I lived within a sugar zone. I was co-owner of a sugar mill; it was the sugar mill Central Puerto Real in Vieques, where I worked for the first time in my life. I worked in the sugar mill in Vieques when I was a boy, when I was about 14 years old, in 1918. After that I have been making studies on the sugar industry in general. I began those studies in 1927.

Attorney General: From this document we offer in evidence part 4, entitled "Land Tenure in the Sugar Industry of Puerto Rico", pages 53, 54, 55, 56, 57, 58, 59 (which is a drawing), 60 and 61. We offer in evidence part 7, entitled "The Sugar Industry and Absenteeism", pages 86, 87 and 88. We also offer Table 2, page 3 of the Appendix, entitled "Comparative death rates in certain areas of Puerto Rico by causes of deaths". We offer, moreover, Table 15 in Appendix I, page 16, "The Sugar Cane Farms in Puerto Rico", wherein appears that there are in Puerto Rico 7693 farms dedicated to the cultivation of sugar cane. From these 3780 farms, that is, 49.14 percent of all the farms, are properties of less than ten acres; 1,526 farms, that is, 19.84 percent of the total number of farms dedicated to the cultivation of sugar cane, are farms of from eleven to twenty-five acres [keeps on reading from Table number 15 above cited].

Mr. Sifre: I understand that my colleague is offering the document in evidence. I was going to object, but he is now reading the document. I request that he offer the document in order that he may give me an opportunity to object to its admission. It seemed to me that he was reading the data appearing in the table.

Chief Justice: The document has already been admitted.

Mr. Sifre: Then I wish to take an exception to the ruling of the court admitting the document in evidence.

Chief Justice: Let the exception be entered.

Attorney General: We also offer in evidence Table number 16 of Appendix I, page 17.

Mr. Sifre: The same objection, because this evidence is entirely immaterial and irrelevant, as questions of an economic nature are to be considered by the Legislature and not by courts of justice. I take exception.

Chief Justice: Let the exception be entered.

Attorney General: We offer Table number 17 of Appendix I, page 18 of the Appendix; Table number 20 of Appendix I, page 21. These are specifically the parts of the report that we wish to mention. And with this we close our case.

Chief Justice: Respondent.

Mr. Sifre: I pray the court to grant me ten minutes to put my things in order.

Chief Justice: The court adjourns for ten minutes.

[After adjournment.]

Mr. Sifre: Your Honors, the evidence for The People of Puerto Rico having ended, I wish to present a motion, of which I have delivered a copy to my distinguished colleague, entitled "Motion Requesting the Dismissal of the Complaint".

"Now comes the respondent, Rubert Hermanos, Inc., and the production of evidence for the plaintiff having ended, respectfully prays this Honorable Supreme Court of Puerto Rico to dismiss the information presented herein, on the following grounds:

"I. The Supreme Court of Puerto Rico is without jurisdiction to entertain this proceeding.

"(a) The Joint Resolution of the Congress of the United States of May 1, 1900, on which the amended information is based, makes an arbitrary, capricious and unconstitutional discrimination against agricultural corporations by favoring other corporations of a different nature, civil partnerships and other entities engaged also in agriculture, thus violating the Fifth Amendment to the Federal Constitution, and is, consequently, null *ab initio*.

"(b) The Supreme Court of Puerto Rico is without jurisdiction because this quo warranto proceeding has been brought with the object of charging the defendant (see page 3 of the

amended information with an alleged violation of a law of the United States, to wit, Section 3 of Joint Resolution No. 23 of the 56th Congress, First Session, approved by the Congress of the United States on May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752). Jurisdiction to entertain alleged violations of said law, if had by any court, would reside exclusively in a Federal court.

"(c) The Supreme court of Puerto Rico is without jurisdiction because this proceeding has been originally brought before this court in accordance with the provisions of Act No. 33, approved by the Legislature of Puerto Rico on July 22, 1935, Special Session Laws, page 418, and of Act No. 47, of August 7, 1935, Special Session Laws, page 540; by the first of which an attempt has been made to grant original jurisdiction to the Supreme Court in all quo warranto proceedings brought by The People of Puerto Rico for violations of the provisions of the aforesaid Section 752, Title 48 of the United States Code. This law prescribes that violations of the provisions of Section 752 shall constitute sufficient cause to institute a proceeding in the nature of quo warranto and was approved by the Legislature of Puerto Rico in excess of the delegated authority of the territorial legislature, as it is not local legislation, and attempts to grant jurisdiction in cases with regard to which the Congress of the United States alone has authority and power to grant such jurisdiction.

"(d) The Supreme Court of Puerto Rico is without jurisdiction because the aforesaid Act No. 33 of July 22, 1935, attempts to enlarge and amend a law of the United States, to wit, Section 752, Title 48 of the United States Code, by attempting to grant to the Supreme Court jurisdiction to punish violations of said Federal Act and by fixing penalties for violations thereof, to wit, those mentioned in Act No. 47, approved by the Legislature of Puerto Rico August 7, 1935, Special Session Laws, page 530, and for this the Legislature of Puerto Rico had no authority, and the law is, consequently, null and void.

"(e) The Supreme Court of Puerto Rico is without jurisdic-

tion because the aforesaid Act No. 33 of July 22, 1935, is void, as it violates the provisions of Section 34 of the Organic Act of Puerto Rico, because it contains more than one subject, to wit, it amends the Act Establishing Quo Warranto Proceedings, approved March 1, 1902, and Section 752 of Title 48 of the United States Code, none of which subjects are expressed in the title of the said law; and because said act does not reenact nor publish in its entirety Section 2 of the "Act Establishing Quo Warranto Proceedings" nor Section 752 of Title 48 of the United States Code, which Act No. 33 amends.

"(f) The Supreme Court of Puerto Rico is without jurisdiction because this quo warranto proceeding is based by The People of Puerto Rico also on Act No. 47 of August 7, 1935, and this Act is equally null and void, as the same was approved by the territorial legislature without any authority whatever, inasmuch as by said Act it has been attempted to establish penalties for the violation of a law of the Congress of the United States, while Congress did not provide or establish any penalties, and because by said Act is has been attempted to legislate on a matter, to wit, the holding of lands by corporations, which Congress has covered entirely and reserved to itself under the Joint Resolution of Congress of May 1, 1900, and Section 39 of the Organic Act of Puerto Rico.

"(g) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47 of August 7, 1935, which is an Act entirely null and void because it has been attempted by the said Act to establish penalties for violations of Section 3 of the Joint Resolution of Congress of May 1, 1900 (Section 752, United States Code, Title 48), which (as a question of fact and law, is not a penal statute and can not be converted into a penal law by an act of the Legislature of Puerto Rico, inasmuch as the Joint Resolution is an act of the United States and can only be amended by the Congress.

"(h) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47 of August 7, 1935, which is null and void, as an attempt has

been made through the said Act to enlarge the terms and scope of Section 3 of the Joint Resolution of May 1, 1900 (Section 752, Title 48 of the United States Code), and constitutes legislation in excess of the delegated powers of the Legislature of Puerto Rico. It has been attempted by the said Act to enlarge and extend the terms and scope of Section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900 (Section 752, Title 48, of the United States Code), since by said Act No. 47 an attempt has been made to establish consequences and penalties for violations of the terms of said Federal Act, as by the terms of said Act No. 47 such violations shall constitute cause to institute quo warranto proceedings and to declare the nullity of acts and contracts and to decree the cancellation of the entities and registrations made in the public registries of Puerto Rico and the confiscation of the real property and its sale at public auction. By said Act No. 47 an attempt has been made to enlarge and amend the terms of a Federal Act by attempting to include penal provisions not included within the terms of the Joint Resolution; by attempting to punish, as prohibited by the terms of said Federal Act, the possession of lands by corporations through other entities or agents; by attempting to punish, as prohibited by said Federal Act, the mere possession of lands in excess of five hundred acres, when Section 3 of said Joint Resolution of Congress, of May 1, 1900, refers to 'ownership and control' by corporations.

"(i) The Supreme Court of Puerto Rico is without jurisdiction because Act No. 47, on which this proceeding is also based, is null and void, as it includes more than one subject, this being prohibited by the provisions of Section 34 of the Organic Act of Puerto Rico. Act No. 47 not only provides that quo warranto proceedings may be brought in certain cases therein enumerated, but also that the judgment entered by the court shall:

"'in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defend-

ant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.' "

"The Act, consequently, deals with quo warranto proceedings, with the nullity of acts and contracts, with the cancellation of entries or registrations made by virtue thereof in the public registries of Puerto Rico and, when the decree of nullity affects real property, it authorizes The People of Puerto Rico, at its own option, to start proceedings to confiscate said property or the sale thereof at public auction. If the latter procedure is chosen, the court is ordered to fix the just value in the manner established by the Law of Eminent Domain. Hence, the law deals with quo warranto proceedings, with the cancellation of acts done and contracts made, with the sale of immovables and with the condemnation of same.

"(j) The Supreme Court of Puerto Rico is without jurisdiction, because Act No. 47 is void, as it violates Section 34, Paragraphs 8 and 9, of the Organic Act of Puerto Rico because the first section of the said Act No. 47 refers to provisions of the Organic Act by its title alone, without re-enacting or publishing those parts of the Federal Law attempted to be enlarged or amended. Moreover by Section 2 of said Act No. 47 an attempt has been made to incorporate by reference to its title the law of eminent domain of Puerto Rico, this being a subject which is not mentioned in the title of said Act No. 47.

"(k) The Supreme Court of Puerto Rico is without jurisdiction because Act No. 47 of August 7, 1935, is null and void, as it violates the provisions of Section 34 of the Organic Act of

Puerto Rico, which prohibits that bills with the exception of general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title. Said Act No. 47 ordains that the judgment entered shall decree the nullity of all acts done and contracts made by the corporation or entity sued and the cancellation of entries or registrations made as a consequence of such acts and contracts, which affects and destroys the rights legally acquired by creditors and by other third persons, and of such matters the title of the law does not give the least notice.

"Provisions of the law of eminent domain of Puerto Rico are included in this law, making them applicable to quo warranto proceedings, without making mention thereof in the title of the law. Said Act No. 47 provides that violations of the Organic Act of Puerto Rico or of its statutes shall be sufficient ground or cause for the institution of quo warranto proceeding, without mentioning in its title the Organic Act or the statutes the violations of which would produce such effect or result. The petitioner, People of Puerto Rico construes Act No. 47 in the sense that it allows quo warranto proceedings against individuals or entities which are not corporations, and in the title of the law no mention is made of quo warranto proceedings which may be brought against such persons and entities, but on the contrary both in the titles of said act and of the quo warranto act which Act No. 47 attempts to amend, reference has only been made to corporations. Said Act No. 47 imposes penalties, not for the acts which may have been done by the corporation which may be sued, and penalty of imprisonment to which private persons may be subjected, without mentioning such penalties in its title. Said Act intermingles criminal provisions of a highly penal nature with provisions of a civil character, thus converting into a penal statute an act which was formerly of a civil nature, without the least indication of such purpose in its title. This Act grants to The People of Puerto Rico the right to confiscate and acquire by purchase the immovables of a defendant corporation, thus authorizing one of the parties to

determine the judgment which should be entered and invading in such manner the judicial power, without mentioning this subject in the title of the law. The title of the Act suggests no intention of amending or extending provisions of the Organic Act or of the Joint Resolution of the Congress of May 1, 1900, with regard to the holding of lands, and nothing is said with reference thereto in the title of the law. The title of the Act entirely omits that the provisions thereof shall have retroactive effect.

"(l) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47, which is null, as it authorizes the confiscation and deprivation of property without due process of law.

"(ll) The Supreme Court of Puerto Rico is without jurisdiction, because this proceeding has been brought under Act No. 47, approved August 7, 1935, which is void as it is an *ex post facto* law, in so far as it applies the penalties therein established to acts done and contracts made before the approval of the Act, thus violating the provisions of the Organic Act, which prohibit *ex post facto* laws.

"(m) The Supreme Court of Puerto Rico is without jurisdiction, as this proceeding has been brought under Act No. 47 which is void, as it deprives the defendant of due process and of the equal protection of the laws, inasmuch as it deprives the defendant of rights acquired through contracts which were valid at the time of their execution, prior to said Act, and of the means of enforcing such rights, and deprives this defendant of rights and property acquired before the approval of said Act No. 47.

"(n) The Supreme Court of Puerto Rico is without jurisdiction because this proceeding has been brought under Act No. 47 which is void, as it provides for the violation of contractual obligations, and the Legislature of Puerto Rico is expressly forbidden by the Organic Act to approve any law impairing the obligation of contracts.

"II. The amended information does not state facts sufficient to constitute a cause of action.

"III. The People of Puerto Rico has no legal capacity to sue.

"This proceeding has been brought by The People of Puerto Rico with the object of punishing supposed or alleged violations of the Joint Resolution of Congress of May 1, 1900. Since should such violations exist they would be violations of a law of the United States, and the United States has granted no authority to The People of Puerto Rico to request in its name that alleged violations of the aforesaid Joint Resolution be punished, The People of Puerto Rico lacks authority and capacity to maintain this action, and the bringing of same constitutes an usurpation of powers by The People of Puerto Rico. The authority which it has been attempted to confer to The People of Puerto Rico, by Act Number 33 and by Act Number 47, is no authority at all as said acts are void, because they were enacted by the Legislature of Puerto Rico without any authority or power to do so, and for other reasons.

"IV. That the evidence adduced by the plaintiff does not support the allegations of the amended information.

"V. That the evidence presented does not show that this respondent is a corporation devoted to agriculture within the meaning of the Joint Resolution of the Congress of May 1, 1900, nor that the respondent owns lands and plants and cultivates sugar cane thereon with any other object but that of carrying out one of the purposes authorized by its Articles of Incorporation, that is to say, that of devoting itself to the industry of sugar manufacturing, and as an incident to the said object of manufacturing sugar."

I wish to inform the court that this motion raises the same questions already considered by the court with regard to jurisdiction and to our averments that Acts numbers 33 and 47 are null and void, etc. The motion, with the exception of paragraphs 4 and 5, is practically a copy of the demurrers presented by me. Hence, we insist on the lack of jurisdiction on the part of the court, etc., and paragraphs four and five are added to the motion. Paragraph four says that the evidence presented by the plaintiff does not support the averments of the

amended information. Paragraph five, that the evidence adduced does not show that this respondent is a corporation engaged in agriculture within the meaning of the Joint Resolution of Congress of May 1, 1900, and that from the evidence it does not appear that this respondent owns lands and plants and cultivates thereon sugar cane with any other object than that of carrying out one of the purposes for which it was authorized by its articles of incorporation, to wit, to engage in the industry of sugar manufacturing, and as an incident to the said object of manufacturing sugar. I wish to add that this point was also raised by the demurrer and decided by the court against us. I have explained the motion briefly as I am not going to argue the same, but only to submit it. It seems to me that my colleagues have had an opportunity to examine the motion.

Chief Justice: Does the opposite party have anything to say?

Attorney General: What my distinguished colleague asserts is true. The questions raised by him through this motion are questions already raised and decided by the court.

Mr. Sifre: The court will decide them.

Chief Justice: The court overrules the motion.

Mr. Sifre: The respondent excepts.

Chief Justice: Let the exception be entered.

Mr. Sifre: Your Honors, on the grounds stated in this motion to dismiss, I have decided not to present any evidence.

Justice Wolf: Is there any new matter?

Mr. Sifre: But I have decided not to present any evidence.

The respondent-appellant, Rubert Hermanos, Inc., prays that this, its bill of exceptions, may be allowed, settled and signed.

San Juan, Puerto Rico, November 23rd, 1938.

JAIME T. SIFRE, JR.,
HENRI BROWN,
Attorneys for RUBERT HERMANOS, INC.

[Title omitted.]

EXHIBITS PRESENTED BY PLAINTIFF.

EXHIBIT No. 1, A, B, C, D AND E.

CONGRESSIONAL RECORD, Vol. 33, Part 1, page 630.

Mr. Foraker introduced a bill (S. 2016) to provide a government for the Island of Puerto Rico, and for other purposes; which was read twice by its title, and referred to the Committee on Pacific Islands and Puerto Rico.

CONGRESSIONAL RECORD, Vol. 33, Part 2, page 1940:

TRADE OF PUERTO RICO.

The Speaker. The question is on the motion of the gentleman from New York (Mr. Payne).

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole on the state of the Union for the consideration of the bill (H. R. 8245) to regulate the trade of Puerto Rico, and for other purposes, with Mr. Hull in the chair.

The bill was read, as follows:

Be it enacted, etc., That the provisions of this act shall apply to the island of Puerto Rico and to the adjacent islands and waters of the islands lying east of the seventy-fourth meridian of longitude west of Greenwich, which was ceded to the United States by the Government of Spain by treaty concluded April 11, 1899; and the name Puerto Rico, as used in this act, shall be held to include not only the island of that name, but all the adjacent islands as aforesaid.

Sec. 2. That on and after the passage of this act the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Puerto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries.

Sec. 3. That on and after the passage of this act all merchandise coming into the United States from Puerto Rico and coming into Puerto Rico from the United States shall be entered at the several ports of entry upon payment of 25 percent of the duties which are

required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries; and, in addition thereto, upon articles of merchandise of Puerto Rican manufacture coming into the United States, customs duties equal in rate and amount to the internal-revenue tax which may be imposed in the United States upon the same articles of merchandise of domestic manufacture; and upon articles of United States manufacture coming into Puerto Rico customs duties equal in rate and amount to the internal-revenue tax which may be imposed in Puerto Rico upon the same articles of Puerto Rican manufacture.

Sec. 4. That the customs duties collected in Puerto Rico in pursuance of this act, less the cost of collecting the same, and the gross amount of all collections of customs in the United States upon articles of merchandise coming from Puerto Rico, shall not be covered into the general fund of the Treasury, but shall be held as a separate fund, and shall be placed at the disposal of the President to be used for the government and benefit of Puerto Rico until otherwise provided by law.

Mr. Payne. Mr. Chairman, an incident of the late Spanish war was the invasion of Puerto Rico by the Army of the United States. At that time it seemed to be almost the universal desire of our people that Puerto Rico should be added to the territory of the United States; but another incident of the war had put our Navy in command of the harbor of Manila and also a portion of the city; and when the commissioners met at Paris and negotiated a treaty the grave question that confronted them was not what was to be done with Cuba or Puerto Rico, but what was to become of the Philippine Islands.

It can not be denied that many of our people were not in harmony with the idea of annexing those islands, so distant from our shores; but as the question was investigated we found that the victory of Dewey at Manila Bay had carried with it grave consequences to those people and grave responsibilities to us. We found that while we had gone to war to give freedom to Cuba, as an incident of that war we had destroyed the Spanish power in the Philippine Islands. The question arose, What was to be done? Some said, "Let Dewey sail away with his fleet and leave the islands to their fate." But that

would not settle the question; nor would it settle the duty of the people of the United States. It would have been moral cowardice; and when the treaty came out of the Paris conference, it came with a clause ceding not only Puerto Rico, but also the Philippine Islands to the United States, with a requirement that we pay out of our Treasury to Spain $20,000,000.

The treaty was not made in a corner. Its contents were known to the world, and all its provisions were known to all the citizens of the Republic. It could not be carried through by the President of the United States alone. It could not be ratified and put into force by any one political party. It needed the assent of other parties before it became binding upon the people of the United States. It went to the Senate. There was long deliberation there. In that body a majority were hostile to the Administration and hostile to the Republican party. Still, under the Constitution, the treaty required a two-thirds vote before it could be ratified. It was ratified. It was a matter also that was an open secret that the great leader of the Democratic party in the last campaign and the leader to be in the campaign to come came to Washington and personally urged his friends to vote for the ratification of this treaty.

The acquisition of Puerto Rico and the acquisition of the Philippine Islands was a matter, then, that was ratified by both the great political parties of the United States. But it did not stop here, Mr. Chairman. The House of Representatives had a duty to perform, a matter of discretion, and a matter of right. When a treaty came before the House of Representatives in 1796, a treaty with Great Britain, while there were among the members of the House of Representatives men who had helped to frame the Constitution, or who were contemporaneous with the framers of the Constitution, when the debates upon the subject were fresh in their minds, at a date to which we look back for our interpretations of the Constitution, the question of the duty of the House of Representatives in regard to a treaty came up for discussion in the House. This resolution was introduced in 1796, on the 1st day of April:

Resolved (as the opinion of this House), That when a treaty is made which requires a law or laws to be passed to carry it into effect

that in such case the House of Representatives has a constitutional right to deliberate and determine the propriety or impropriety of passing such laws and to act thereon as the public good shall require.

That resolution was adopted. During its consideration speeches were made upon it, the power and duty and the rights of the House of Representatives in such case were fully discussed, and it was determined by a decisive vote of 57 yeas to 35 nays that they had the rights set forth in the resolution, and they adopted it as an expression of the opinion and deliberate judgment of the House of Representatives.

This question came up again in 1804, and came up at a subsequent period in the House of Representatives; and this determination of the House was received, accepted, and adopted as the opinion of the House. It is a precedent, as our friends would say, of a hundred years, and of course was binding upon them, and was binding upon us when we came to consider the question of the appropriation of $20,000,000 to carry this treaty into effect. It was not only ratified by the President and two-thirds of the Senate, but it came to this House for a vote.

The question was debated for a short time in the House. Debate ran fast and furious on the subject, but when we came to vote it was found that there were 219 yeas and only 33 nays; and among those who voted to carry this treaty into effect were three gentlemen in the minority of the committee, the gentleman from Tennessee (Mr. Richardson), the gentleman from New York (Mr. McClellan), and the gentleman from Nevada (Mr. Mewlands), who have signed these minority views and the then leader of the Democratic House, the gentleman from Texas (Mr. Bailey), and the would-be leader of the Democratic party in this Congress, the gentleman from New York (Mr. Sulzer), ratified, by their votes in the affirmative, the carrying of this treaty into effect.

Now, Mr. Chairman, all political parties have approved this treaty and accepted the cession of the Philippine Islands to the United States and the island of Puerto Rico to the United States. As patriots, instead of trying to make some political capital for the Presidential campaign, we should sit down with deliberate, dispassionate judgment

and consider the questions that confront us with reference to these islands.

The island of Puerto Rico, with which the bill deals, is one of the richest islands of the West Indies, a small island, about 80 miles in length and 40 miles in width, in the form of a parallelogram, running east and west, with a mountain range running along the center, some 3,000 feet high at the summit, and cultivated from the summit clear down to the seashore, with level lands along the line of the sea at the foot of the hills averaging in width from nothing to 5 miles, on which sugar is raised the higher lands adjoining fitted for the cultivation of tobacco, pasturage, and the higher lands of the mountains on which coffee is cultivated. It is said to be the most densely populated of any land in the whole world.

The citizens of Puerto Rico accepted the conditions. They could not very well do anything else. We had the consent of the governed, but the governed were too weak to yield up anything except consent to the powers of Spain and the powers of the United States. As the gentleman from New York said the other day, they received the troops with open arms, but whether, if Spain had come along the next day, they would not have received them still more gladly he was not able to say.

The superficial area of this island is about 2,000,000 acres, Mr. Chairman, of which 76,000 acres are used for the cultivation of sugar cane, 182,000 acres for coffee, 18,000 acres for tobacco, 185,000 acres for minor crops, 17,000, as the reports say, for "small items under cultivation;" pasturage, 1,148,000 acres—considerable more than one-half; under-brush, 140,000 acres; wood, 165,000 acres, and not classed, 65,000 acres. It is said that these last three items, containing 370,000 acres, are such that it will never be possible to bring them under cultivation.

Its population, estimated now is 1,000,000 people, although the Spanish census in 1896 disclosed only 900,000 people. These were divided into negroes, 76,000; mulattoes, 242,000; whites, 582,000.

The testimony before the Insular Committee was that the whites were generally full-blooded white people, descendants of the Span-

iards, possibly mixed with some Indian blood, but none of them negro extraction.

Now, Mr. Chairman, we have acquired the control of the territory of Puerto Rico, what are we going to do with it? What is our first duty toward that island? It appears that of the whole population only 12 percent can read and write, and 14½ percent can read only. In other words, the number and proportion of illiterates is overwhelming. The educated reside mostly in the cities and the large towns, and in the country there is a dense mass of ignorance. Not that these people are not willing to learn, not that they are not apt to learn, for the testimony of our Army officers who went down there and citizens who went there is that they are quick to learn, eager to learn and especially eager to learn and speak the English language. The difficulty has been that Spain has not provided schools for these children. No building was ever built for a schoolhouse in the island of Puerto Rico until about four months ago. They had schools scattered over the island, but they were rented places.

Mr. Cochran of Missouri. Will the gentleman allow me an interruption?

Mr. Payne. I will yield this time, but I do not like to be interrupted.

Mr. Cochran of Missouri. Is it not true that when the war between the United States and Spain broke out there was a university at Manila within the neighborhood of 800 students in it?

Mr. Payne. I am not talking about Manila.

Mr. Cochran of Missouri. I understood you to say that there were no schools there.

Mr. Payne. I am talking about Puerto Rico. Now, Mr. Chairman, I will resume. Our people have increased the number of schools. As I said, the only schoolhouses were rented buildings, generally rented from the teacher himself. They were without school furniture, many of the children bringing a chair or stool to sit upon. They tell the story that in one schoolhouse there was a hammock thrown across the room, and when asked what it was for the teacher said that was where he reclined when school was in session.

Of course, under these difficult circumstances it is not to be wondered at that not more than 12 percent of these people can read or

write. When our people got control and possession of Puerto Rico they went to work to establish schools. They built a high school at San Juan, and they propose to build a normal school to instruct teachers how to educate children, because the Administration believes, and I believe, as every good citizen will believe, that the paramount duty of the United States is to educate these people, to furnish them schoolhouses for every part of the island; and I do not care if they put up the American Flag over every one of them and teach patriotism as well as the English language. (Applause on the Republican side.)

Spain collected in taxes from these people over 5,000,000 pesos annually. A peso is a Spanish or Puerto Rican silver dollar, containing about 93½ per cent as much silver as an American silver dollar. It is worth now in the market 41 cents but by an Executive order it was made exchangeable in United States money at the rate of 60 cents for a peso. So it was worth 60 cents of our money. Spain collected these 5,000,000 pesos from these people. But instead of building schoolhouses or providing a school system they took about half of this money to support the Spanish army and navy and to help out poor Spain from year to year.

The exports of the island were about 17,000,000 pesos and the imports about the same amount. The three principal items of export were coffee, sugar and tobacco, in the order named. About 60 per cent of the total exports was coffee, about 20 per cent sugar, and about 5 per cent tobacco. The market for the coffee was found principally in Spain, and also in Cuba. That which went to Spain found its way to France and Germany, and some of it to the United States, where it is sold for the best Mocha and the best Java, and I am told by competent experts that the best grades of it are fully equal if not superior to any Mocha or Java coffee that can be bought anywhere in the world.

When the war was over Spain put a prohibitive duty on coffee, as she did upon tobacco, and a corresponding duty upon sugar. Cuba, which we hold in trust, demanded of the United States that we put a duty upon Puerto Rican coffee and Puerto Rican tobacco. A large portion of the tobacco crop was brought to Cuba in the years gone by free of duty, and there it was made up into cigars, sometimes mixed with Habana tobacco and sometimes not, but most of it came

to the United States in the shape of the best Habana tobacco. The better qualities of this were exported. There were some minor grades that went to Europe, principally to Germany, selling at 5 or 10 cents a pound.

The export of tobacco was 4,000,000 pounds annually. One year it went up to 6,000,000 pounds, but the normal average exports were 4,000,000 pounds. They raise a million or two pounds more, which are consumed in the island. These were made into cigars and cigarettes by the natives and sold there.

Of sugar about three-fifths came to the United States and two-fifths went to Spain. That is about the proportion that has been exported to the two countries for the last ten years. Some of the time perhaps we got two-thirds of it. So that a part of sugar market was in Spain and the rest in the United States. Spain cut off the market for sugar, cut off the market for coffee, cut off the market for tobacco, which was 85 per cent of their exports, and left the people without a market for these commodities, save that they had in the United States.

In addition to that, Cuba demanded of the Government not only a duty on coffee which was prohibitory, but a duty of $5 a pound on tobacco, which was also prohibitory, and under which not a pound could be exported to Cuba.

Well, these Puerto Ricans began to feel as though they had been made the victims of misplaced confidence. When they saw the flag go up and knew that "prosperity followed the flag", as a matter of course they expected to get a little of that prosperity themselves. Instead of that, the first result was to cut off these markets. More than that, on the 8th of August last there occurred there a storm, or hurricane, which swept that island from end to end; such a storm as had not been known there since 1867. It occurred at a time when they were getting ready to harvest the crop of coffee, which bade fair to be a great crop.

One man, an extensive coffee planter, estimated that the entire output of coffee would exceed that of any previous year by 7,000,000 pesos in value. The normal crop is somewhere about eight or ten million pesos. This crop, which was expected to be a double crop, was by this storm wiped out of existence, because the winds swept the

berries from off the bushes, and then the rain descended, so that when the sun came out there was nothing left by the dry and shriveled part—of no use whatever. Not 10 per cent of the ordinary crop was harvested in consequence of the effect of that storm. And that was not the worst of it. The market had been tied up for a year by these adverse tariff rates in Cuba and Spain; the coffee crop of the year before was sheltered in their little huts and in crudely constructed buildings all over the land. The wind razed these huts to the ground, destroying the greater portion of the crop of the previous year. So a double calamity came upon these people.

The winds did great damage and occasioned great desolation. In addition to the damage to the sugar crop and the tobacco crop, more than 2,000 people perished in the storm, while hundreds of thousands were turned out of their rude homes, shelterless to the blasts that beat upon them.

This was the condition in August last. And these people who had begun to despair under what had come to them from the loss of markets had still more reason to despair because of the devastation of this terrible storm.

Mr. Chairman, after I had heard these representations from the gentlemen who appeared before the Committee on Insular Affairs, particularly the report of that honorable, able, and competent official, Brigadier-General Davis, who is now the military commander, it seems to me that Congress ought to afford some relief as quickly as possible to the people of these islands.

The President had recommended that we give them free trade with the United States. The Secretary of War had also recommended it in his report, and without consultation with anyone, on my own individual motion I introduced a bill and had it referred to the Committee on Ways and Means establishing customs ports in Puerto Rico, giving to the people of that island free trade with the United States, and between the United States and the ports of the island, and also extending the internal-revenue laws to the island and the islands adjacent to Puerto Rico. I wanted to relieve these people from the position in which they were placed.

My own sympathies were entirely enlisted in their behalf. I

sympathized with their distress then as I sympathize with them to-day. They have not rebelled; they have not raised their arms against the Government of the United States; they have submitted quietly, and I wanted to do something for them for their relief. We could not help them with reference to their coffee, because coffee is free in the United States from whatsoever port it comes. It must depend therefore upon the good will of the United States to give them market for their coffee. The War Department officially did give to these people, I agree, the right that coffee might be imported there free, and the order putting on a duty was rescinded.

But Cuba is only a market for the small remnant of coffee that is left over after the great storm of 1899, and the price of coffee has gone back to the old figure. If Puerto Rico only had enough coffee and the market for it, this would help at least to the extent of 60 percent to the inhabitants of the island who are depending upon that industry for their support.

Mr. Norton of Ohio. If the gentleman will permit me, I think I am in sympathy with the gentleman in the views that he has expressed, and I should be very glad if I could be able to vote for the bill; but I would like to be informed upon one point, and ask him to yield to me for a question.

Mr. Payne. Certainly.

Mr. Norton of Ohio. I should be glad also to help the gentleman in helping the Cubans. But I think in giving the value of the peso, a few minutes ago, he said that it amounted to about 40 or 41 cents of our money.

Mr. Payne. No; the gentleman is mistaken. I said that 93½ per cent of the peso was silver, and that is was worth 41 or 42 cents in bullion; buy by Executive order the value was fixed at 60 cents on the dollar.

Mr. Norton of Ohio. This increase was made by Executive order? Now, if an Executive order can increase the value of the peso in the proportion the gentleman has stated, why can not an Executive order make it equal to a full dollar in value, and help the people in that way? (Laughter on the Democratic side.)

Mr. Payne. Well, Mr. Chairman, the gentleman is drifting off from

the subject. But I will amuse him a little on my way. There are about $5,000,000 of pesos, in the Puerto Rican Islands in circulation, and when the United States gives 60 cents in good United States money for each of them it makes them worth that amount, of course.

Mr. Gaines. Will the gentleman allow me to ask him a question?

Mr. Payne. No, I can not yield; not even for the first gun fired in this war.

Mr. Gaines. Well, you are going to hear a good many fired before you get through with this question, I can tell you.

Mr. Payne. These questions, Mr. Chairman, are only taking up my time, and I do not desire to occupy very much of the time of the committee, as there are other gentlemen who desire to follow me, I am already occupying more time than I had expected. The first thing that was to be considered in devising a plan for the revenues of the island—because the money was to be expended there—was to provide a government for the island. General Davis, a careful investigator, says that the expenditure would amount to $1,943,678.71 next year. It would only allow about $350,000 for the schools and about $300,000 for the highways. We must meet this question, therefore, and provide revenue for the support of the island. If we are to provide for these necessities it must be done by taxation in some way, or else we can not help the island. Where would it be best, then, to direct our attention in placing that taxation? That was the nature of the question that confronted us, and that we had to consider.

I sought General Davis. I sought other men who were acquainted with the circumstances, knew the imports, knew the revenues, knew all the surroundings in Puerto Rico, and I was assured that we could collect not exceeding $500,000 from the tariff and $500,000 from the internal revenue, in all a million dollars, to meet $2,000,000 of expenditures. Then I began to look around me and saw what effect the internal revenue taxes would have upon the people of these islands.

They manufacture there annually a million and a half gallons of rum. It is sold all over the island. It is a necessity of life, or they

think so, for the poor people of that island. These million and a half gallons retail at from 25 to 40 cents a gallon. The internal-revenue tax upon that, under the law that we were about to extend, would amount to $1.20 a gallon. The price to these people would be multiplied by four. How could they get their rum? We were cutting it off.

Well, now, some gentlemen may say they would be better off without the rum. I think that myself, that constitutionally and in the matter of laying up money they would be better off without the rum, but they have been used to it all their lives. They are poor people, and when a government comes along and arbitrarily cuts off rum from a community that has been accustomed to it, every man of whom wants it, why there is bound to be trouble, and there would have been trouble with those Puerto Ricans if we had passed that act in that way to cut off their supply of rum.

In addition to that, Puerto Rico has been importing from Cuba a million and a half pesos' worth of cigars from year to year. The Puerto Ricans have made a million pounds of their own tobacco up into cigars and cigarettes and sold them over the island each year.

General Davis says it will be very difficult to collect this tax on tobacco. "I suppose there are two or three thousand shops in Puerto Rico. A man has a hut in which he lives in one room, and in another sells a little rum, rolls cigarettes and sells them and sells tobacco, and cigars, and fruits, and beans, and codfish, and has a general store, and he is in himself a tobacco manufacturer and retailer, saloon keeper and grocer."

Suppose we applied our internal-revenue taxes to these items? This is the cheap tobacco, cheaply made up, thrown together into cigars for the poor people of the island, these people whose coffee crop has been annihilated, and hundreds of thousands of whom have depended upon the charity of the good people of the United States to keep them from starving and to furnish them shelter, the only relief that they have received thus far from becoming a part of the territory of the United States.

Mr. Terry. Will the gentleman permit me to ask him a question?

Mr. Payne. If it is on this subject, yes. If it is about something else, no.

Mr. Terry. It would seem to me, from the logic of the gentleman's position, that he is in favor of giving these people cheap luxuries and high-priced necessities.

Mr. Payne. Well, the gentleman will know more as he grows older. I am not to blame for what "seems to him" now.

Mr. Chairman, the taxation would simply have destroyed these industries and would not have given us any appreciable revenue, no money for schools, no money for highways, no money for anything except the hard, stern realities of governing those people. So as a revenue raiser the bill which I first introduced was a failure, and, as I understand it, the first and paramount thing in a tariff bill, under the idea of the Republican party, always has been to raise sufficient revenue to support the Government as we go along.

Then the further question came along, Mr. Chairman, how much we were giving to these producers of sugar under the bill as first introduced. It would only benefit a moderate percentage of the people. They had been selling and sending abroad 58,000 tons of sugar, on an average, annually.

According to the statistics, they have 76,000 acres in sugar plantations. Other gentlemen say that they average a production of a ton to an acre, and that it takes a man to cultivate an acre, or 60,000 people to cultivate this sugar during the season. These men would be benefited by free sugar, and the owners of the plantations, some of them small ones and some of them with 700 and the largest with 1,500 acre plantations, would receive the direct benefit. If the Puerto Rican is the shrewd man that they say he is, and I hope and trust he may prove so, the laborers on those sugar plantations would get a part of this benefit, but largely, of course, as we all know, it would go to the planter and to the factory and to the merchant.

CONGRESSIONAL RECORD, Vol. 33, Part 2, Pages 2008, 2009:

Mr. Swanson. Mr. Chairman, the President, in his annual message to Congress, told us that it was "our plain duty to abolish all customs tariff between the United States and Puerto Rico, and to give to her

products free access to our markets". He forcibly pointed out the reasons that made this duty imperative.

Following this, Mr. Payne, the chairman of the Committee on Ways and Means and the leader of the Republican majority of this House, introduced a bill carrying out the recommendations of the President. At that time there was practical unanimity in both the Democratic and the Republican party that the reciprocal benefits of free trade should exist between Puerto Rico and this country. But in the last few weeks the entire policy of the Republican party in dealing with this matter has been reversed. The "plain duty" so pointedly presented by the President has ceased to exist, and a different idea of justice, or right, and of wisdom seems now to possess him and his party.

Mr. Powers. Will the gentleman yield for a question?

Mr. Swanson. I will.

Mr. Powers. I understand the gentleman to intimate that the President had changed his attitude.

Mr. Swanson. I simply say that those in authority have made the statement that he has changed it. I hope he has not.

Mr. Powers. Has any authorized statement come from him?

Mr. Swanson. I have seen none emanating from him.

There has been no change in the conditions of Puerto Rico or of this country to produce this change in the President's mind or in that of his party. The unfortunate people of that island are still immersed in poverty and in wretchedness and still have denied to them the markets of the world for the sale of their products. Every reason assigned in the President's message for free trade with Puerto Rico exists with redoubled force to-day. If at that time it was "our plain duty" to extend them free trade, it is doubly so to-day.

Why, then, sirs, this sudden change of policy in dealing with Puerto Rico? Why is our acknowledged "plain duty" now abandoned and this oppressive bill sought to be forced upon a helpless people? Is it a patriotic or is it a political condition that has wrought this wonderful change?

There is not an intelligent or candid mind in this country that does

not know that this change has been induced by the political necessities of the coming Presidential election.

We are told by the inspired and the well informed that this measure is not intended to be permanent and that in the not far distant future free trade with Puerto Rico will be established.

We are told that this bill is intended as a precedent to establish the doctrine that Congress has the power to create different custom duties in our new possessions from those existing in this country.

We were told by those representing the sugar and the tobacco interests, when they appeared before the Committee on Ways and Means, that they insisted upon the custom duties on the products of Puerto Rico not because any serious evils could accrue to this country through any importations from there, but because they are afraid that unless duties are imposed upon Puerto Rican products, it will be used as a precedent for granting free trade with the Philippine Islands, which they greatly fear.

We are told by Republican politicians and newspapers that unless these custom duties are imposed upon Puerto Rico, it will be argued during the Presidential campaign with force and effect that the same policy will be pursued with the Philippine Islands, and that this might result in the loss of a great many votes to the Republican party.

Thus, Mr. Chairman, it is evident that this bill has its inspiration not in justice, not in right, but in selfishness and in petty partisan politics.

A "plain duty" is to be abandoned for a supposed party advantage. One million of unfortunate people whom the fate of war has placed completely at our mercy are to be sacrificed and justice and right denied because it is thought by some that the exigencies of the Republican party require it.

Mr. Chairman, when this bill passes it will be the first chapter in the legislative history of our new possessions, and be it said to the disgrace of the Republican party that that chapter was written in wrong and in injustice for the purpose of carrying a Presidential election.

If we are to extend our possessions and inaugurate a colonial system, wisdom dictates that it should begin in justice, liberality, and

equality. But if our colonial policy must be dominated by partisan party politics, as this bill indicates, it can but commence in disgrace and terminate in disaster.

And we are told, again, that the bill must be passed to establish a certain principle.

What is that principle so dear that this bill must pass to vindicate? Is it proposed to establish the doctrine that Congress has unlimited power of legislation for the new possessions, unrestrained by any of the provisions of the Federal Constitution, and that it can entirely disregard the provision of the Constitution requiring uniformity of custom duties throughout the United States, and that it can establish any rate of duty it sees fit between the States and the territories or possessions?

In short, the doctrine claimed is that the inhabitants of Puerto Rico and of the Philippine Islands are slaves of the imperial will of Congress, and in life, in liberty, and in property are entirely subject to its decrees.

This is the pernicious doctrine proposed and sought to be established by the Republican party.

Mr. Chairman, this is no new doctrine in American history. This Republic owes its birth to the effort on the part of the British Parliament to establish precisely the same principle.

The principles here maintained by the opposition are in every respect similar to those contended for at the time of the American Revolution by George III. The issues are the same. The reasons given are the same.

At that time it was claimed that the British Parliament was absolute sovereign in America; that Parliament had a right to impose any tax it wished in America; that it could regulate the conditions upon which American goods should enter the British markets, and also the conditions upon which British goods should enter the American markets.

It was contended that the British constitution, with its safeguards and its inestimable privileges, did not extend to America; that the Americans were but absolute subjects of the British Parliament.

To carry into effect these pernicious principles, the British Parlia-

ment passed the infamous stamp act. The speeches in Parliament in advocacy of that measure bear a striking resemblance to those delivered by the opposition in behalf of this bill.

Lord Grenville, in that debate, said that the purpose of the stamp act was "to establish the undoubted authority of the British legislation in all cases whatsoever".

The advocates of this bill claim that its purpose is to establish in our possessions the undoubted authority of the American Congress in all cases whatsoever.

But the similarity does not cease here. To make the iniquitous stamp act tolerable to the Americans, it provided that the revenue derived from it should not be remitted to England, but should be retained and expended in America.

So this bill provides that the sum collected under it shall be expended in Puerto Rico. Hence the Puerto Ricans are told, as were our forefathers, that this makes the bill eminently just and wise.

The person who drew this bill must have had before him the infamous stamp act and must have used it as a prototype for this iniquitous measure.

The able gentlemen who have argued in favor of this measure and of the power of Congress must have had their minds illumined and their views strengthened by reading the speeches of Lord Grenville, or Lord North, and of Charles Townshend in speaking in advocacy of the stamp act and of the power of the British Parliament.

Mr. Chairman, in contradistinction to these pernicious British contentions, our forefathers maintained that taxation and representation went hand in hand; that all government derived its just powers from the consent of the governed, and that they were British subjects, entitled to all the benefits of the British constitution.

The two great leaders in this contention were George III on the one side and George Washington on the other.

It was thought that at least in America the fight was forever and finally settled in favor of George Washington and of his inestimable principles, but it seems that those who believe in the principles of George III are to-day in authority and in power in the United States. His iniquitous doctrines, his pernicious principles of parliamentary

despotism, reappear in the American Congress to-day in this bill, which is sanctioned and supported by the Republican party. When the roll is called upon this bill every Representative must answer whether he is a follower of George III or of George Washington. (Applause.)

Mr. Chairman, the injustice of this bill is equal to that sought to be inflicted by the British upon the Americans at the time of the Revolution. This bill fixes the terms upon which the goods and products of Puerto Rico can be offered for sale in the markets of this country and also the terms upon which the people of Puerto Rico must purchase our goods. Thus we claim the power of controlling their sales to us and also their purchases from us. This is a dangerous power which no nation should possess over another and one which will always be abused for the enrichment of the nation possessed of the power. This bill itself furnishes a striking instance of how such power will invariably be used.

Now, tobacco is one of the chief products of Puerto Rico. While Puerto Rico was a Spanish possession the markets of Cuba and of Spain were open to her and consumed the entire product of Puerto Rican tobacco. Since her annexation to this country the markets of Cuba and of Spain have been closed to her products, and now Puerto Rico can look to this country alone for a market for her 4,000,000 pounds of tobacco. This tobacco is used entirely in the making of a good grade of cigars. By this bill a duty of 8¾ cents will be imposed upon each pound of her tobacco that is brought here in a raw or unmanufactured state. Under this bill, if this same tobacco is manufactured into cigars, cheroots, or cigarettes in Puerto Rico and imported into this country, it will be compelled to pay in customs duties an internal-revenue taxes $3.13 per pound. Thus by this bill thirty-five times more is charged in customs duties and taxes on cigars than on the raw leaf. Thus the bill, if it gives any protection, gives scarcely any to the farmers and producers of tobacco in this country, but extends it all to the cigar manufacturers.

Mr. Lacey. Will the gentleman allow me to ask him a question?

Mr. Swanson. Yes.

Mr. Lacey. Is not that simply the internal-revenue tax?

Mr. Swanson. No; I will explain that to you.

Mr. Lacey. I should like to have the gentleman explain it.

Mr. Swanson. They charge 25 per cent under the Dingley bill as a customs duty, and the bill provides in addition to that that they shall pay the internal-revenue tax as a customs duty, and then it has to pay the internal-revenue tax as an internal-revenue tax when it comes into this country, making $3.13 per pound.

Mr. Lacey. I do not understand it in that way.

Mr. Swanson. The purpose of this is plain and evident. The clear intention of the bill is to force all of the leaf tobacco raised in Puerto Rico to be imported into this country and to be here manufactured into cigars. Its purpose is to close every cigar, cheroot, and cigarette factory in Puerto Rico and to transfer them to this country. The sinister motive behind this bill is to discourage and to destroy any manufacturing developments in that island. It intends to confine the 1,000,000 people in that unhappy island to raising raw materials to be imported here for the purpose of manufacturing.

Mr. Chairman, this is an outrage. It is precisely the same iniquitous policy that Britain sought to inflict upon the American colonies when we rebelled and refused to submit.

In Puerto Rico there are about 300 people to every square mile, and the island will be powerless to support its vast population unless permitted to embark in manufacturing enterprises. The clear purpose of this bill and of the Republican party is to prohibit this.

While this bill will require the payment of $3.13 for every pound of their cigars seeking our markets, yet it opens their markets to our cigar makers on the payment of only $1.13 per pound. This is such an inequality that it should shock every person's sense of justice and right. The shame becomes deeper when we reflect that the act is directed against a helpless people who can only protest, but must submit.

We are told by the eloquent advocates of the new imperialistic policy that we hold "a trusteeship under God" to care for, develop, and direct the destiny of these people. What a splendid illustration is here given of the discharge of this high trust. At the very

first opportunity the so-called "divinely appointed trustees" despoil the dependent wards. (Applause.)

Sir, this Government interfered in Cuba and in Puerto Rico because Spanish injustice and despotism had become intolerable. So, if I mistake not, the American people consented to shed the precious blood of their sons and to spend vast treasures to relieve an oppressed people, and not to become heirs of the vicious Spanish system.

What has been the conduct of our Government toward the inhabitants of Puerto Rico? We found there a peaceful community and comparatively a prosperous people. They possessed in Cuba and in Spain ample markets at which to sell, at a remunerative price, their three chief products—coffee, sugar, and tobacco. They enjoyed a large share of local self-government and had representative in the Spanish Cortes.

To-day all the markets of the world are closed to them and they are deprived of all the opportunities by treaty or otherwise of securing them. Their products can find no sale. To-day discontent and depression everywhere pervades the island. Debts aggregating more than $50,000,000 burden these people. All industries are destroyed; all business paralyzed. Thousands of people are in the depths of starvation, and all are on the verge of bankruptcy. For nearly two years we have deprived this people of all civil government and held them by the stern iron hand of military rule alone.

Amid all these privations there was one hope that illumined the darkness and gave these people patience. They felt that they were a part and a parcel of this great Republic and that they would soon receive its blessings and benefits. They relied implicitly upon being treated with justice and liberality. With the passage of this bill must come disappointment, bitter and deep. By it they are made not citizens of a republic but creatures of a Congressional despotism. By it they perceive that, being deprived of uniformity in taxation and customs duties with the rest of the Union, all of their earnings and products will be subject to the depredations of any selfish interest that may have political pull sufficient to influence Congress.

Behold what a contrast is presented between the proposed treat-

ment of Hawaii and that of Puerto Rico. There is scarcely any objection from any source to extending free trade to Hawaii. In other words, the 300,000 tons of sugar produced in Hawaii by Spreckles, the sugar king, with his contract laborers or slaves, shall have free and open sale in our markets yet the 60,000 tons of sugar produced in Puerto Rico by thousands of small farmers and laborers can be sold in our markets only by the payment of heavy duties.

What causes this great difference? Certainly it can not be inspired by any principal of protection, for there is greater danger to the sugar interests of this country from the 300,000 tons of Hawaii than from the 60,000 tons of Puerto Rico.

No, Mr. Chairman, be it said to the shame of the Republican party, the difference arises from the fact that the sugar interest of Hawaii is owned by a few millionaires, whose voice is potential in the councils of the Republican party, while that of Puerto Rico is owned by thousands of poor, dependent persons without political influence. (Applause.) This favoritism must produce great dissatisfaction and discontent in Puerto Rico, and justly so. But, say the opposition, the inhabitants of Puerto Rico should acquiesce. Why, say they, are we not their imperial masters? Have we not, in exercise of our despotic power, the right to give to some and to withhold from others? As divine sovereigns, say they, have we not the right to select favorites and to shower them with all the favor and benefits and at the same time make others feel the crushing hand of our power?

CONGRESSIONAL RECORD, Vol. 33, Part 3, Page 2273:

Mr. Chairman, Puerto Rico needs free trade now, the best market she can get for her products. As I have stated, free trade with Puerto Rico would at once carry large investments to that island in the sugar and tobacco business.

CONGRESSIONAL RECORD, Vol. 33, Part 3, Page 2402.

Mr. Paine. Mr. Chairman, in the original section there was some doubt as to the meaning of it, and the question arose whether we had not provided for the payment of a double internal-revenue tax.

At the suggestion of members of the committee and my own, I went to the Commissioner of Internal Revenue and asked him to draw a section making it plain that only one tax was exacted. Under the substitute that was offered for this section the duty will be 15 per cent on manufactured articles, such as cigars and spirits coming into the United States, and also the internal-revenue tax, or an amount equal to the internal revenue, on like articles manufactured in the United States. Under the general internal-revenue laws taxes are imposed upon goods withdrawn for consumption and this imposes a like tax upon goods withdrawn for consumption from the custom-house coming from Puerto Rico. The other amendment reduces the amount of customs duties to be collected from 25 per cent to 15 per cent.

I would say to the House, Mr. Chairman, that I have been constrained to offer this amendment after consultation with gentlemen upon this side of the House. I still adhere to the original proposition that 25 per cent would be better. It would produce more revenue; it would relieve the present strain and the present emergency. However, since the tax was put at 25 per cent I have learned that there are more goods on hand ready to be brought into the United States than I was able to ascertain at the time the rate was fixed at 25 per cent. It is stated that there are over 3,000,000 pounds of tobacco and a vast quantity of sugar ready to be brought in. In any event it will bring in a large sum of money for the present emergencies.

CONGRESSIONAL RECORD, Vol. 33, Part 3, Page 2412.

The Chairman. The Clerk will read.

The Clerk read as follows:

The members of the several delegations from Puerto Rico, sent here to explain to the members of Congress the conditions existing in their island and to ask for it the establishment at once of free commercial relations with the United States, to the end that the people of Puerto Rico may be relieved from the bankruptcy which stares them in the face and the fearful contemplation of thousands of deaths among their poor by reason of the starvation which is

following the stagnation in business, worse than ever before in the history of the island, and due chiefly to the contraction of business which has followed the control of the island by the United States, and having read compromise measure adopted at the conference of the Republican members of Congress held last night, desire to make the following statement to Congress and the public:

One of the reasons given by the Republican leaders in Congress, who stand behind the tariff measure, is that they see no other way in which money can be raised for the support of the island except by direct taxation, which they allege the people of Puerto Rico would not agree to, or by special appropriation by Congress. Let us say on this point that the island of Puerto Rico raised an annual budget of $4,400,000. Of this amount the following sums, in round numbers, were, for the army, $1,200,000; for the minister of colonies, $400,000; for pensions, $300,000; for the clergy, $400,000; for the navy, $400,000; making a total of $2,700,000. Thus there were raised for these purposes annually an amount larger than the total amount now required for the expenses of the island, as estimated by Governor-General Davis, and larger by far than will be raised by the proposed tariff. We refer with pride and call the attention of the people of the United States to the fact that we freed our own slaves, paying therefor, in principal and interest, about $12,000,000, without asking aid from Spain or elsewhere. We repudiate the idea that we can not raise the amount necessary to carry on the affairs of the island.

The idea and theory of a tariff is repugnant to us. Our people, since the American occupancy, have been lead to believe by Americans themselves, by the utterances of such eminent officers as General Miles, General Henry, and General Davis, by the Secretary of War in his annual report, by the honored President of the United States in his annual message to Congress, by the terms of the bill originally introduced in the House of Representatives, by the Chairman of the Committee on Ways and Means, and by the almost universal expression of opinion in the public press, that they were entitled to and would receive, without any material delay, absolutely free commercial relations with this country, to which they now must look, but instead of which a tariff unnecessary for revenue is offered.

The United States Government, through the State Department, has recently negotiated a treaty with the island of Trinidad, in the West Indies, which is a British province and a direct competitor of Puerto Rico, by the terms of which treaty Trinidad is to receive from the United States, free of duty, all articles of machinery and implements and articles of husbandry and nearly all food supplies, the free list for Trinidad in this treaty being larger by far than the list of articles now admitted free in Puerto Rico by Executive order, every one of which it is proposed to tax under the tariff bill now pending in Congress. Is this fair? We think not.

The time for a vote on this bill is rapidly approaching, and we therefore do not intend to make any elaborate argument, being content to stand before our people at home and the people of the United States on the general broad proposition that the island is entitled to receive absolutely free commercial relations at once, and that with them it can be easily made not only self-supporting, but will speedily become an exceedingly valuable possession of the United States, with a population loyal to the flag.

Every Puerto Rican and every American who knows the situation of the island believes that the mere announcement of the grant of free commercial relations, as a matter of justice, and therefore irrevocable, will bring instant relief and permanent prosperity to the industries of our island.

Respectfully submitted,

GEO. I. FINLAY,
MANUEL FERNANDEZ JUNCOS,
JOHN D. N. LUCE,
J. JULIO HENNA,
ARTURO BRAVO,
J. R. LATIMER,
L. SANCHES MORALES,
LUCAS AMADEO,
AZEL AMES,
T. LARRINAGA,
R. VALDES,
Commissioners of Puerto Rico

Washington, D. C., February 27, 1900.

The Merchants' Association of New York, a commercial body in that city, composed of 1,400 firms and corporations, having no interest in Puerto Rico but the general one of expanding trade and commerce, has investigated thoroughly the commercial conditions in that island through its accredited representative, Mr. William R. Corwine, and the officers of that association believe fully that the speedy establishment of free commercial relations is absolutely necessary to place the island in a proper position.

THE MERCHANTS' ASSOCIATION OF NEW YORK,
By Wm. R. Corwine.

During the reading of the foregoing, the time of Mr. Richardson having expired,

Mr. Richardson said: Mr. Chairman, the debate on this amendment is to close at 1 o'clock. I ask that the time be extended, to allow the Clerk to finish the reading of this.

Mr. Hopkins. Why not let the time for closing the debate on this amendment be 1 o'clock and 5 minutes?

Mr Richardson Why not let it be extended to 1.10?

Mr. Payne. I ask that the time for debate on this amendment be extended to five minutes after 1.

Mr. Richardson. Make it ten minutes after 1. We may want to use five minutes in reply.

Mr. Payne. I have the right to reply. If the gentleman wants to speak afterwards, let him do so on the next amendment.

Mr. Richardson. I do not care, if we get it on the next amendment.

The Chairman. Does the gentleman from New York modify his request?

Mr. Payne. I ask that the debate on the amendment close at 1.05.

The Chairman. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk resumed the reading. Having begun the reading of the signatures.

Mr. Richardson said: Mr. Chairman, let the Clerk omit the reading of the names.

Mr. Payne. Oh, no; read the names.

Mr. Richardson. Very well.

The Clerk resumed and completed the reading of the above.

Mr. Payne. I desired to have the names read in order that the House might know who these gentlemen are. They are largely a delegation coming up here from Puerto Rico, the most of whom are directly and pecuniarily interested in exporting sugar and tobacco free to the United States. The gentleman first named is a gentleman whom I met the other day downstairs, and he wanted me to come in and make a great name for myself and go for free trade for Puerto Rico. I said to him, "The reason you want free trade rather than a 75 per cent reduction is that instead of getting the $300,000 that you will get under a 75 per cent reduction, instead of getting that much more for your sugar, you want to get $100,000 in addition, and you are whining about these lobbies and shedding tears for the poor people of Puerto Rico and are not willing to give up this $100,000 for their benefit and for their relief from taxation."

Who are the Merchants' Association of the City of New York? Why, they are the gentlemen who are interested in free trade with all the world. It is no new thing for them to come before Congress. It is no new thing for them to come to the Ways and Means Committee for a reduction of duties. They are always asking for that.

What is the fact, Mr. Chairman? They say they have raised $5,000,000. They raised 5,000,000 pesos rather, or $3,000,000, by taxation in 1896 or 1897. They paid those taxes to Spain in the way of export taxes, transportation taxes, and every conceivable form of taxes that could be put on every industry in the island, in order to raise money for Spain. But they raised that sum when they were prosperous, when they were not recovering from a devastating storm that had swept the island from one end to the other. They raised it when they were exporting over $10,000,000 worth of coffee, instead of less than $1,000,000 worth, as they must do now. They raised it, Mr. Chairman, when the storm had not interfered with their tobacco or their sugar plantations.

This bill is to meet a present emergency, to raise revenue to provide for an emergency, to raise revenue for this year, nay for this

month, to raise in order to do what? To help out the poor taxpayers, help out the poor people, to give the people of that island a chance for education and to rise in the world; to build public improvements, including highways; but we want the money now. The committee have said they did not see any other means to raise it. What did these gentlemen reply? That before there was a storm, before their property was destroyed, before their crop was swept away, they were able to raise 5,000,000 pesos a year. When they recover from this storm, and after five years have elapsed and the coffee plantations get into shape to produce a crop, I have no doubt that they can raise 5,000,000 pesos a year. In the meantime we take out of the men who get the benefit of this bill a little by the way of toll and pay it for the benefit of all the island, and especially those who are suffering from the effects of the storm. (Loud applause on the Republican side.)

Mr. Richardson. I am a little—

Mr. Chairman. Debate is exhausted.

Mr. Richardson. I understood we were to get ten minutes.

The Chairman. The gentleman from New York asked for five minutes only.

CONGRESSIONAL RECORD, Vol. 33, Part 3, Pages 2414, 2415, 2416.

Mr. Payne asks:

You have had free sugar from Hawaii all the time?—*A.* Yes, but that has more than doubled in the last ten years, and that has hurt us. I do not claim that the admission of the present sugar, what they are making now, will hurt us so much; but what I claim is large investments will go into Puerto Rico in the sugar business as soon as it is found that these immense profits can be made.

I do not know whether the conversion of the gentleman from New York (Mr. Payne) dates from that time or not, but here is a man who knows something about this sugar business and he says that with free sugar large investments will go down there and greatly increase their business, and this would increase the opportunities for labor, enable those people to pay their own taxes, and provide their own schools. General Davis says in his report—and if the gentle-

man doubts it I will read it—that these people are almost naked, without food; and when Mr. Cooper asked him the question if they could be educated, if furnished facilities, he says, "Not until you give them clothes and provisions. You can not expect children to attend school in their nakedness. Give them first new trade conditions. Enable them to earn food and clothing." And that is what we claim free trade for that island would do.

Mr. Steele. I want to ask the gentleman if Mr. Oxnard did not also say, in that same connection, that all the sugar that could be produced in Puerto Rico would make no difference; that what he was afraid of was sugar from Puerto Rico and the Philippines?

Mr. James R. Williams. He did not.

Mr. Steele. He certainly did.

Mr. James R. Williams. I have it all here before me. He said they did not fear it now, but that if you give them free sugar it would so increase their business as to take away a part of our markets, and, as I claim, large investments in the sugar business in Puerto Rico would increase the opportunities of these people for obtaining a livelihood and clothing and feeding themselves, and enable them to pay their own taxes.

Now, let us go further. The whole proposition has been presented on the question of revenue. What do we find? We find that the people in Puerto Rico are willing to raise more revenue than is necessary to pay all the expenses there. By the estimate submitted, including appropriations for schools, colleges, and roads, and internal improvements, the total is about $2,000,000. How do the people of Puerto Rico say they are willing to have that sum raised? By extending the customs laws and the internal-revenue taxes there. They manufacture one million and a half gallons of rum, there every year. The tax upon that, under our laws, by extending our internal-revenue taxes there, would amount to a million and a half dollars a year at least. They consume in Puerto Rico a million pounds of tobacco every year, made into cigars and cigarettes. Put the internal-revenue taxes on that, and that would amount to a million dollars a year. That would make two million and a half

dollars of revenue raised simply by extending by extending our internal-revenue laws there—$500,000 more than is necessary. Then the customs dues and also the additional internal-revenue tax on other articles would run the revenue up to $3,000,000 a year, by the extension of our customs laws and internal-revenue laws to that island.

Mr. Jones, of Virginia. Four million dollars.

Mr. Swanson. Four million dollars, if we include the internal-revenue tax on tobacco to be imported here. It would only take $2,000,000 to run the local affairs of the island, and from one to two million dollars a year would go into the Treasury of the United States to help pay the general expenses of the Federal Government. Now, these people are willing to do that. Petitions were sent here yesterday by General Davis asking for free trade and the extension of our customs laws and internal-revenue taxes. These people are willing to pay those taxes. Not a man, not a petition, has come here contrary to that. So, then, the excuse of taxation and revenue disappears.

Now, why is not that method pursued? Why should gentlemen antagonize these people, who are willing to pay more revenue than you say is necessary, if they are allowed to pay in their own way. They wish to have the tax collected on their rum and tobacco, and you impose it on their food and clothing. Why do you desire to force them to pay it in your way? There is no excuse except the pride of the Ways and Means Committee. It has got to be a question of pride with the majority of that committee. They must force through some kind of bill imposing customs duties. They have fought to force the President to abandon his position, and they come in here to tell you he has capitulated to them.

The Chairman. The time of the gentleman has expired.

Mr. Swanson. I ask unanimous consent that I have an extension of five minutes.

The Chairman. The gentleman from Virginia asks unanimous consent that his time be extended five minutes. Is there objection?

There was no objection.

Mr. Swanson. Now, if the President favors this bill, if the President has changed his mind, if the President has received more information, there is one way provided by the Constitution for him to in-

form Congress of that fact. That is to send a message to Congress, which, under his constitutional duty, he ought to do if he has changed. But is the constitutional method of communicating with Congress by the President also to be abrogated with the destruction of the Constitution?

Mr. Gaines. Will my friend yield?

Mr. Swanson. I have but five minutes and I can not.

Now, Mr. Chairman, until the President takes this constitutional method of notifying us of the change, I shall believe that he still considers it the plain duty of this country to give free trade to Puerto Rico.

Behold the iniquity of this bill on sugar. Everybody knows that the sugar made in the Hawaiian Islands, amounting to 300,000 tons, shall come in free. Why that? Because Claus Spreckles, a Republican potential in the councils of the Republican party, owns the entire sugar industry of Hawaii. (Applause on the Democratic side.) In Hawaii sugar is raised by a system of contract labor amounting to slavery; and yet we give to his 300,000 tons of sugar a free American market, and while on this 60,000 tons of Puerto Rico sugar we impose a duty under this bill. (Renewed applause.) Tell me, if you can explain it, how the people of Puerto Rico are to be satisfied? How can you expect them to feel that there is justice given to the Puerto Ricans by the American people with this outrageous discrimination?

. . . . . .

Mr. Fitzgerald of New York. Mr. Chairman, yesterday my friend from Illinois (Mr. Cannon) stated that one of the reasons why this tariff should be imposed was because all the sugar and tobacco in Puerto Rico at this time was in the hands of the American Sugar trust and the American Tobacco trust. Looking for information, I asked the gentleman, if that were true, why reduce the tariff of the Dingley bill 75 per cent; and the only answer to the question that I could get, which was hardly satisfactory, was that I had become "red-headed".

The gentleman from Ohio (Mr. Grosvenor) makes the same statement to-day as to the ownership of this tobacco and sugar. Now, if that be true, I should like some gentleman to explain how this reduction of the tariff is to benefit the poor Puerto Ricans. The report of

the Committee on Ways and Means says that by thus imposing a duty of 25 per cent of the Dingley tariff a million dollars will be saved.

The gentleman from Illinois (Mr. Cannon) said:

Why, Mr. Chairman, these two great trusts have control now of both of these products in the island, and the moment they land here the price jumps up by the amount of the Dingley tariff bill, and they put the money in their pockets. Who can dispute that proposition?

Well, if that be true I would like to know how the Committee on Ways and Means arrives at this conclusion:

The price of sugar being fixed in the United States, it follows that this one-million-dollar reduction in tariff duty, or the greater part of it, would, at this very critical time, come to the rescue of the sugar producers of Puerto Rico. That it would infuse new life and vigor and hope into the people of this island needs no argument.

Now, Mr. Chairman, if we believe, as the Republican party does, that wherever trusts exist and are encouraged and assisted to the fullest possible extent by legislation the people are benefited, we could then hold up our hands, and say, "Lord, help us and give us more of such legislation."

Why, it has been repeatedly stated by members of the Republican party that there is sufficient legislation at present on the statute books to control trusts. The Republican party has evidently got new light on this question. In order to control trusts in their peculiar way, it is necessary that they should continue to reduce this tariff, so that the trust may grow at the expense of the people. The Committee on Ways and Means say further in their report:

As the price of tobacco in the United States would not be affected by the passage of this substitute, the Puerto Rican planter would have the benefit of a great portion of this reduction of duty.

Why, how can they, if, as the gentleman from Illinois (Mr. Cannon) and the gentleman from Ohio (Mr. Grosvenor), who evidently speak by the card, say, these two great trusts of this country control all the product there at present? Many explanations have been given for the additional 10 per cent reduction proposed to-day. It appears to me that some of the representatives of these two great trusts listened to the speech of the gentleman from Illinois (Mr. Cannon)

yesterday, and in their great solicitude for their own welfare they hastened to the secret conclaves of the Republican party and demanded that this be reduced to the lowest possible point, so they would be paid in "coin" for the benefits they had given to the party in the last campaign and for anticipated benefit in the coming campaign. (Applause on the Democratic side.)

CONGRESSIONAL RECORD, Vol. 33 Part 3, Pages 2483, 2484.

But I would like to suggest to gentlemen on the other side that they have not shown the greatest amount of sympathy toward Puerto Rico, because, under the regulations they have adopted with reference to the coastwise trade, these people will be compelled to carry their goods in American vessels instead of tramp steamers and steamers of other countries, and thus will be obliged to pay nearly double the rates which they have heretofore paid.

These gentlemen who undertake to manifest such remarkable sympathy for the Puerto Ricans assume to have found out just how many pounds of tobacco and sugar are down in that country in the warehouses. I do not know whether their estimates are correct or not. I have seen no evidence in support of them; but I have no doubt that a good many of the citizens of Puerto Rico still hold the sugar which they produced last year, as this is about the time when they would be reducing it; so that this measure would affect the whole sugar crop of the island for the benefit of the people generally. Gentlemen have talked here as though the island of Puerto Rico, with an area of only one-tenth of the State of Kentucky, is going to control the whole commerce of this country, with an area of three million and a half square miles. It is absolutely ridiculous to make such an assumption with regard to a little piece of land down there under the Tropics. Let us be broad and liberal in dealing with this question.

Mr. Richardson. I yield three minutes to the gentleman from Arkansas (Mr. McRae).

Mr. McRae. Mr. Speaker, the presentation of this bill is a confession by the majority of this House that they have outraged the rights of the Puerto Ricans by collecting tariff taxes on their articles of

commerce brought to our shores; that they have collected under the Dingley law $2,095,445 unlawfully and unjustly. This action has so outraged the sense of justice of the American people that they now come and say that they are willing to return this money so collected if the Congress of the United States will allow the Administration to continue to enforce the Dingley law against those helpless people. They ask us by the passage of this bill to admit the right of the Administration to apply the Dingley law indefinitely. Why, sir, when that is done there is not a trust in this country interested in excluding Puerto Rican products that would not be willing to see the bill which passed the other day for the collection of 15 per cent of the Dingley tariff duty on articles passing between these two countries defeated, because this bill will allow all of that duty.

Mr. Speaker, when the proper time comes, if permitted, I will move to amend this bill by striking out all of that portion of it except that which provides for returning to the people of Puerto Rico this money which has been so unjustly and unconstitutionally taken from them. We are in favor of that. If this bill be passed, we have no assurance that, even if Congress should give those people local self-government, the President would not continue to expend this money and the money hereafter collected. There is no limitation upon the President and no direction as to how he shall use it. It is wrong to take the money by enforced taxation and turn it over to anyone to be used as he may see fit.

It is outrage upon these people. The President of the United States has extended the navigation laws of this country to Puerto Rico because that island is a part of the United States. Why, then, if that island is a part of the United States, are they not entitled to have free trade with the United States, as have the other territories—Arizona, the Indian Territory, Oklahoma, New Mexico, and the District of Columbia, or any other parts of the Union? The majority can not defend the action they have taken by annexing this and other islands—taken against the protest of many of us on this side—and at the same time refuse to extend to the people thereof all of the rights they demand and expect for themselves. It is the duty of Congress to fix the status of that country and discontinue the collection of

imposts under the operation of the Dingley law. (Applause on the Democratic side.)

Mr. Richardson. Mr. Speaker, I yield three minutes to the gentleman from Colorado (Mr. Bell).

Mr. Bell. Mr. Speaker, it is almost as confusing to find this bill here this morning, after what has occurred, as it was for the gentleman from Iowa (Mr. Dolliver) to follow the gentleman from Maine (Mr. Littlefield) "tangled up in the labyrinths of the Constitution." The fact is, that this bill comes as an apology for former wrongs committed. I will guarantee that you may go back over the history of this country from its foundation, and such another chapter of inconsistencies, of changes of position, of shifting of scenes, can not be developed anywhere.

I would like, Mr. Chairman, for the gentleman from Illinois (Mr. Cannon) to explain to us how it is that he is so anxious that the trust of which he speaks shall not get additional benefit from the proposition that he now favors. The presidents of two of the greatest trusts in the country have been here advocating his policy. The heads, as I understand, of two of these trusts have been before the committee and insisted that that committee should frame and pass the bill to do just what is proposed here.

Now, it seems that the gentleman has found some other trust that is going to get some benefit from this, and that trusts are so thick that when you miss one you fall into the hands of another. I thought our friends claimed that there were no real trusts. I would like now for our friends on the other side to explain how it is that Hawaii, 2,080 miles from our doors, producing three or four times, yes, five times, the products of sugar, etc., of Puerto Rico, and owned by the great Spreckels and these other sugar magnates, and three-fourths of the inhabitans and all of the laborers, Chinese, Japanese, and South Sea Islanders, can come into these markets of the United States free of all duties? Why is it that this little island of Puerto Rico, not bigger than my county, and three-fourths of the inhabitants and laborers Caucasians, must pay a revenue to get in to bring their products into the markets of their own country? (Applause.)

Now, I want to tell you what the effect of this legislation will be. The American syndicates, like those that have bought up Hawaii, and bought their entry through political influence into the American market free, and are such a controlling influence here, will soon have Puerto Rico in the same condition. You have the people in Puerto Rico impoverished and will hold them down, whether intentionally or not, by this policy and keep down the value of their lands until they are bought up by the American speculators, who will, when they own these rich sugar lands of the island, likewise influence their sugar in free of all duty. (Applause.)

CONGRESSIONAL RECORD, Vol. 33 Part 3, Page 2649.

Mr. Scott. May I ask the Senator from Ohio a question?

Mr. Foraker. With pleasure.

Mr. Scott. Is it not the general report that the products of Puerto Rico are now held by so-called trusts, so that the 15 per cent duty that you are now proposing to levy upon the imports of Puerto Rico into this country would largely fall upon those trusts and not upon the people proper of Puerto Rico?

Mr. Foraker. That is according to my information; I think that is according to the information of all the members of our committee, and I think that is according to common report. As to what the facts as I have no personal knowledge, but I do understand—and it has been stated over and over again, and it has not been denied, so far as I have heard, by anybody—that practically all the tobacco and all the sugar now ready for export from the island of Puerto Rico is owned by the tobacco and the sugar trusts. So the imposition of the duty of 15 per cent upon sugar and tobacco in the island is not, as it has been charged in the newspapers—and I would not speak of it, I would think it beneath the dignity of the Senate to refer to it, if the Senator had not called my attention to it—is not an imposition on the people of Puerto Rico proper, but an imposition of the tax upon those who own the sugar and tobacco and who must pay, for the benefit of the people of Puerto Rico, to whom we give it back as soon as it has been paid, but I do not put it on that ground.

Mr. Bacon. Will the Senator permit an inquiry in that connection?

Mr. Foraker. Certainly.

Mr. Bacon. I understand from the statement of the Senator, which he says is in accord with general information, that the producers in Puerto Rico have already been paid for those products. Am I correct in that?

Mr. Foraker. I so understand—I do not pretend to have any personal knowledge about it, and the Senator knows as much about it as I do—I understand that the tobacco and the sugar in the island have been bought up by the trusts very largely.

Mr. Bacon. If that is the case, and the producers have already received the money for their products, outside of the tornado over there, what causes the great distress in Puerto Rico, if it is not due to the fact that the people can not sell their products?

CONGRESSIONAL RECORD, Vol. 33, Part 3, Page 2695.

In explanation of this tariff taxation it has been said that the sugar and the tobacco now held in Puerto Rico is the property of certain trusts, that are not entitled to legislative consideration. Whether we propose to reduce the Dingley tariff duties 85 per cent for the benefit of those trusts or to impose the 15 per cent duty by way of punishment is not made clear by any argument I have yet heard by the supporters of this bill. The same trusts import their sugars from the Hawaiian Islands into American ports free of duty.

If they buy from our Puerto Rican neighbors, they are to be required to pay a duty equal to 15 per cent of the Dingley tariff duties; and to do this the price of sugar in the hands of the Puerto Ricans must be diminished to that extent in order to compete with the sugar imported from Hawaii. It seems to be the policy of this bill to have free trade in sugar with the Hawaiian oligarchy, but to have taxed trade in sugar when we come to deal with the people of Puerto Rico.

CONGRESSIONAL RECORD, APPENDIX, Vol. 33, Part 8, Page 204

Porto Rico.

SPEECH OF HON. ABRAHAM L. BRICK, OF INDIANA IN THE HOUSE OF REPRESENTATIVES,

Wednesday, April 11, 1900,

On the bill (H.R. 8245) entitled "An act temporarily to provide revenues for the relief of the island of Puerto Rico, and for other purposes," and the Senate amendments thereto.

Mr. Brick said.

Mr. Speaker: After all the debate, constitutional and otherwise, had upon the subject of the Porto Rican tariff for the last sixty days, I would hardly have raised my voice in regard to it at this time but for the fact that persons hav upon the floor of the House, under the consideration of the Hawaiian civil government bill, asked the question—I suppose and hope, in good faith—why should we not treat Porto Rico the same way we are now proposing to treat Hawaii? Why not give Porto Rico free trade and the same civil government here and now as we do to Hawaii? And with equal consistency, and no better reason, that question might also mean, and probably does, why not apply the same legislative details, revenue system, and business measures to Alaska, Oklahoma, Arizona, New Mexico, Guam, Porto Rico, Hawaii, and the Philippines? In catchy phrase and misleading speech they ask, why not treat them all alike? and have attempted to emphasize their utterance by malappropriate praise of the Hawaiian measure

Whatever their motive may be, and however plain the answer is to us here in Congress, for the people's sake this deceiving proposition should not be allowed to pass unnoticed and unchallenged. And let me observe at the outset that people's desires very often incite the argument of their speech. I would expect the sugar trust, who are required to purchase about 80 per cent of the raw sugar material they use in making refined sugar from Porto Rico and

other sugar-producing fields abroad, to say that any tariff on sugar, wherever laid, is unjust and an outrage. They must purchase raw sugar for refining purposes and from other and sugar producing lands. We can not supply the sugar required here in the United States in sufficient quantities; therefore, a tariff on raw sugar would have to be paid by the great sugar refineries. And so I am not surprised when I learned that Havemeyer was for free trade on Porto Rican sugar, and denounces the protective tariff system as the mother of trusts.

The great tobacco combination of America must buy its filler from Cuba and Porto Rico and other countries. They can not get all and what they want in this country. Therefore, knowing human nature as I do, I was not struck with paralyzing astonishment when I noticed that they, among others equally interested, had declared that all revenue from tariff collected by the United States since we came into possession of the island of Porto Rico was unconstitutional, and had brought suit to recover about $1,800,000 collected in that way, and which, by recommendation of the President, Congress has turned over to the exclusive benefit of the Porto Ricans within the last few weeks.

Porto Rico raises no wheat, and she is looked upon as the legitimate and exclusive playground for the pork packers. So it occurs to me quite natural that the great wholesale flour producers and meat men should look upon any tariff between this country and Porto Rico for any purpose, even though it should all be given to the starving people there, as un-American in spirit and vicious in principle—all this solicitude on their part for the glory of God and suffering humanity in Porto Rico. I can easily see how the sugar and tobacco speculators, who have been holding their stock in expectation of free trade, to escape the payment of any tax—which means, at a very conservative estimate, $500,000 to them the minute the words "freetrade" are written in the statute books—should behold with horror even this slight tariff, although it would go from them to feed the hungry laborer and to house the unsheltered child and wife of stricken Porto Rico.

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Every consumer of tobacco, sugar or coffee is directly interested and would be benefited by free trade with Porto Rico. Every manufacturer, except three, and every workingman in every manufactory except those controlled by these three, and every farmer who raises live stock, wool, corn, or wheat, is directly to be benefited by free trade with Porto Rico. Three manufacturers would be injured by free trade with Porto Rico. The tobacco trust, the sugar trust, and the coffee trust. Establish free trade with Porto Rico and there will be competition in the manufacture of tobacco, refining of sugar, and the roasting of coffee.

Leave a tariff of 15 per cent upon these raw materials and these three manufacturers need fear no competition. The reason for this is plain. Under the rebate clause of the Dingley law goods imported for manufacture where the product is exported are entitled to a drawback of 99 per cent of the tariff paid. As these trusts control the export trade in these articles they would pay but 1 per cent of the 15 per cent, while any competitor would have to pay the whole duty. Any competitor would pay just one hundred times as much tariff as the sugar trust, the tobacco trust, or the coffee trust.

Mr. Speaker, who owns the island of Porto Rico? Do the people of the United States own the island, or do these three trusts own the island? If the treaty with Spain was between these trusts and Spain this bill is right. They should reap the benefits of it. If the treaty with Spain was made by the United States and not by the trusts, this bill is wrong. Now, let us consider briefly, and very briefly as it is admitted in all of the public documents issued and all the expressions from Republican leaders, what obligations rest upon the people of the United States under their relations with the people of Porto Rico.

Porto Rico had local self-government; and the inhabitants of Porto Rico were citizens of Spain, and entitled to the protection of the Government of Spain. Spain transferred her sovereignty to the United States. With that transfer of sovereignty passed the right of local self-government. If the citizens of Porto Rico did not become citizens of the United States, entitled to all of the constitutional

privileges of such citizens, then without their consent they became deprived of all citizenship and were without a country. They were made outcasts from all nations without any fault of their own.

They welcomed the Government of the United States, believing that they had become a part of that Government. At the expiration of eighteen months they find that they have no citizenship; the United States courts have refused to take cognizance of appeals, and appeals have been perfected to the supreme court of Spain, which will probably refuse to take jurisdiction of them. It has been but a few days since men were goaded to death for criminal offenses. The act shocked the people of the United States, and they were even more shocked when they learned that the successful culmination of the war for humanity did not, in the opinion of the Executive of the United States, give him any power to be humane.

Nearly two years after Spain had transferred her sovereignty Spain was still the sovereign. This Spanish mode of execution could not be interfered with, and why? Because if the President of the United States had taken jurisdiction where the treaty gave him jurisdiction, it would have been an exercise of Executive authority under the Constitution, which would bring Puerto Rico under the Constitution, and would deprive the trusts of the advantage which had been promised them.

Mr. Speaker, the American people thought, when they fought this war, that they were fighting it as a protest against Spanish atrocities on the Western Hemisphere. The American people, Mr. Speaker, have labored under the impression that they were victorious and that with the signing of the treaty of peace the atrocities ceased, and that the islands on the Caribbean were brought under the humane influences of the United States Government. That impression was shared by every Republican member of this House and by the President of these United States with his Cabinet until a few days ago.

Then the trusts notified the Republican party that the United States Government did not have jurisdiction over Porto Rico, but was only a conduit through which the jurisdiction over Porto Rico was to pass on its way from the Kingdom of Spain to the despotism of the trusts. The President learned undoubtedly to his sorrow, and it

must have been to his surprise, that he did not have the power to commute a Spanish sentence in Porto Rico or change a Spanish mode of punishment.

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Porto Rico produces sugar, tobacco, and coffee. We are about to take her into the commercial union of the United States and to give her the benefit of our enlarged markets. The agricultural production of Porto Rico will be largely stimulated and the prices realized for her products largely increased. What will be the tendency of all this? Why, simply that capital will seek to acquire the land, and that gradually these lands will drift into large holdings and will be controlled by syndicates and corporations. Shall we, then, simply content ourselves with prescribing a form of government suited to a free people without taking into consideration the fact that the entrance of Porto Rico into our commercial union will vastly increase the value of the lands at the expense of the labor employed on the lands, or shall we take into consideration the economic conditions of these islands, the degraded condition of labor, and seek to establish a system by which the benefit of the increased production will go to the laborers themselves and not entirely to the landowners?

It seems to me apparent that the time for action upon these questions is now, for otherwise, when this governmental bill shall go out of our hands, the whole subject-matter of conditions in Porto Rico will drift from our consideration and our whole time will be taken up with domestic affairs. Preventive legislation is much more beneficial than remedial legislation. If we allow things to drift, the most oppresive land monoply will be organized in Porto Rico, based upon semislave labor, and it will be extremely difficult later on to remedy conditions; but if we take hold of the matter now we can make provision in this very bill that will prevent land monoply, and will secure to the laborers the advantage secured by the incorporation of Porto Rico in our commercial union.

In the Hawaiian bill we take these matters up. We limited the holdings of agricultural corporations; we provided for reports to

the Department of Labor as to the area and extent of agricultural holdings, the condition of the laborers employed on the holdings, their nationality, and their wages. We also provided for a commissioner of labor, who should make reports both to the Hawaiian legislature and the American Congress regarding the condition of labor as to sanitation, intelligence, wages, and other conditions; and thus we laid the foundation for intelligent action both upon the part of the Territorial legislature and of Congress. This bill is entirely wanting in these matters. It provides simply for government without regarding the conditions of the people governed and without regard to the economic conditions which, if neglected, will make good government absolutely impossible, however perfect may be the form of the government framed.

The question of land monopoly is one that is not familiar to the people of this country. We have here 70,000,000 of people in a country capable of supporting four or five hundred millions, but this question is one which has become a most vital question in all densely populated countries, and we must recollect that Porto Rico is one of the most densely populated countries in the world. The best security for stable and intelligent government there will be small holdings or present proprietorship, and a bill providing for the government of Porto Rico which does not take hold vigorously of the land and labor questions utterly fails in all the purposes of scientific government.

(Page 665)

There remained, then, only one thing to do, and that was to raise the revenue so far as possible by customs duties. As will be seen by the table given a few minutes ago, the bulk of the funds for the expenses of the island had been raised for many years by customs duties. The people were accustomed to that kind of taxation and their affairs were adjusted to it. Besides, the bulk of it was and is paid by the wealthy, the poor not using imported articles to any great extent. The poor live largely on the tropical fruits which grow there in such abundance. Children up to 8 years of age go naked. People never wear many clothes. Three-fourths of the people never in their lives wear shoes or stockings.

To sum up on this point, free trade would have freed the Porto Ricans from customs taxes, but it would have imposed upon them our internal-revenue taxes, the proceeds of which would have gone into the National Treasury, and then it would have been necessary for them to raise by direct taxation the funds necessary to defray their governmental expenses. This, as General Davis said, would have amounted to confiscation of their property.

On the other hand, with the small customs duties levied under the act, the Porto Ricans escape entirely our internal-revenue taxation, which would have made "moonshiners" and rebels of them; and they escape entirely direct taxation of their property, which would in many cases have amounted to confiscation.

Our plan gave them one small, usual, easily carried tax; the other plan would have put upon them two heavy, unusual, burdensome taxes.

We believe that we adopted the plan kindest to them and wisest for us. And I propose now to show that it is the most satisfactory plan to the people of Porto Rico themselves.

WHAT THE PEOPLE OF PORTO RICO THEMSELVES THINK.

None of the Porto Ricans in this city, except the lobby which came here in the interest of the men who own the sugar and tobacco now stored in the warehouses of Porto Rico, wanted immediate free trade. Those who were consulted were unanimous in their opinion that the small duty proposed in the House bill, and which saves the people of Porto Rico from having to carry the burden of our internal-revenue system and from direct taxation on their property, is kinder and better for Porto Rico than immediate free trade would be.

CONGRESSIONAL RECORD, Vol. 33, Part 5, Page 4613.

House of Representatives. Tuesday, April 24, 1900.

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. Henry N. Couden, D. D.

The Journal of yesterday's proceedings was read and approved.

ADMINISTRATION OF CIVIL AFFAIRS IN PORTO RICO.

Mr. Cooper of Wisconsin. Mr. Speaker, I ask unanimous consent for the immediate consideration of Senate joint resolution 116, reported by the Committee on Insular Affairs.

The Speaker. The gentleman from Wisconsin asks unanimous consent for the consideration of Senate joint resolution 116. Is there objection?

Mr. McRae. I ask that it be read, Mr. Speaker.

The Speaker. Let the resolution be reported.

The joint resolution was read, as follows: Joint resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the act approved April 12, 1900, entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes".

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That until the officer to fill any office provided for by the act of April 12, 1900, entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes", shall have been appointed and qualified, the officer or officers now performing the civil duties pertaining to such office may continue to perform the same under the authority of said act; and no officer of the Army shall lose his commission by reason thereof: Provided, That nothing herein contained shall be held to extend the time for the appointment and qualification of any such officers beyond the 1st day of August, 1900.

The following amendments, recommended by the Committee on Insular Affairs, were read:

Add at the end of line 13 of the printed joint resolution the following:

"Sec. 2. That all franchises, privileges, or concessions mentioned in section 32 of said act shall be approved by the President of the United States, and no such franchise, privilege, or concession shall be operative until it shall have been so approved."

Further amend by adding the following:

"Sec. 3. That all charters granting any franchises, privileges, or concessions, mentioned in section 32 of said act, to private corporations shall provide that the same shall be subject to amendment, alteration, or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends, and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof, and for the purchase or taking by the public authorities of their property at a fair valuation. No corporation shall be authorized to conduct the business of buying and selling real estate, of issuing currency, or of engaging in agriculture, or permitted to hold or own real estate, except such as may be reasonably necessary to enable it to carry out the purposes for which it was created. Banking corporations, however, may be authorized to loan funds upon real estate security, and to purchase real estate when necessary for the collection of loans, but they shall dispose of all real estate so obtained within five years after receiving the title. Corporations other than those organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

Mr. McRae. I make no objection, Mr. Speaker.

The Speaker. Is there objection? (After a pause.) The Chair hears none. Is there any arrangement as to time?

Mr. Cooper of Wisconsin. I spoke to the gentleman from Virginia (Mr. Jones) last evening, and he said that an hour would be sufficient.

Mr. Hill. Mr. Speaker, I wish to reserve a point of order against the two amendments.

The Speaker. What was the statement of the gentleman from Wisconsin?

Mr. Cooper of Wisconsin. I spoke to the gentleman from Virginia last night, who is the leading member of the committee on the other side concerning the resolution, and he consented that one hour should be allowed.

The Speaker. Then it is understood that there is to be one hour's debate, thirty minutes to be controlled by the gentleman from Wis-

consin and thirty minutes by the gentleman from Virginia (Mr. Jones). Is there objection?

Mr. Hill. Mr. Speaker, it is understood that I reserved the point of order against the two amendments.

The Speaker. The gentleman's statement was heard. The Chair will state to the gentleman from Connecticut that unanimous consent has been given for the consideration of the bill.

Mr. Hill. That is all right. I want to reserve the point of order.

Mr. Loud. Mr. Speaker, I trust the gentleman from Connecticut will present his point of order now. I yielded to the gentleman from Wisconsin with the understanding that not more than one hour should be taken up in the consideration of the resolution. If the gentleman is to press his point of order after the hour is taken up, I can not yield.

Mr. Hill. Well, Mr. Speaker, I make the point of order now. I make the point of order, in the first place; that the amendments are not germane to the resolution; in the second place, that the joint resolution can not be so amended; in the third place, that if so amended it must be considered in Committee of the Whole, and in the fourth place, that the joint resolution is temporary in its character and that the amendments are permanent.

The Speaker. Does the gentleman from Wisconsin (Mr. Cooper) desire to be heard on the point of order?

Mr. Cooper of Wisconsin. I do not think this exact question has ever been before the House. I can not find any precedents precisely covering the case. However, in view of the character of the proposed legislation on which the point of order is raised, I do not think it would be well to have it pressed, for more reasons than one.

(Page 4616)

Now, then, the two amendments which are proposed by the Committee on Insular Affairs are to remedy defects, and they are very serious and obvious defects, to the original act. They are defects which have attracted the attention of the country, the attention of the newspaper press of the country, irrespective of party, and in

this connection I desire to call attention of the House and the attention of the gentleman from Connecticut to a leading editorial in the New York Daily Tribune of Thursday, April 19.

(Page 4617)

Mr. Cooper of Wisconsin. Now, I do not believe, Mr. Speaker, in the indiscriminate abuse that we often hear heaped on corporations, simply as corporations. Man, men who indulge in that sort of language are very frequently unjust, and not infrequently corrupt. Corporations are necessary institutions in business affairs, and we want them to go to Porto Rico as quickly as they can for the benefit of that island itself; that is, the corporations who will deal properly and justly with the people when they get there.

We do not want any balloon enterprises, which will take the people up into the clouds and then burst and drop them. We want business men, strong, safe, solvent corporations, to undertake the business of the island, and there is no restriction in that amendment which would prevent the going there of corporations of that character as soon as the civil government is established in the island. And these restrictions were made by the amendments to this bill to remedy possible abuses if they should occur. Of course we all know that there are abuses in many cases in the management of corporations.

(Page 4618)

I am not one of those who believe that the whole American people are a set of rascals and scoundrels who would go to Porto Rico and plunder it. I believe that the business men of this country are entitled to some confidence even in the House of Representatives, whether organized as trust companies, savings banks, or as sugar planters in Porto Rico. I believe that if this bill goes into effect you will prevent corporate capital of great amounts, or small amounts of aggregated capital, engaging in the cultivation in Porto Rico of sugar and fruit. If you stop the American Fruit Company and any other fruit company of the United States going there to attempt to develop the possibilities of Porto Rico, by saying that any such com-

pany shall not buy any of the lands, you will have absolutely put a damper on the island of Porto Rico from which it will not recover in twenty-five years.

Mr. Jones of Virginia. Mr. Speaker, speaking for the minority members of the Committee on Insular Affairs, I wish to express a hope that this joint resolution, as amended by that committee, may be passed. I had hoped that there would be no opposition to the amendments on either side of this Chamber. It seems to me to be so manifestly necessary that we should adopt both of these amendments, and adopt them at once, that it is incomprehensible to me how there can be objection from any source to ingrafting them upon this joint resolution. The act which it is sought to amend throws no restrictions or safeguards around the granting of franchises by the executive council, and only requires that such grants shall receive the approval of the governor of Porto Rico before becoming operative. This, it must be admitted, is a most extraordinary power and one capable of great abuse.

The first amendment provides that, in addition to the approval of the governor of Porto Rico, all franchises or other concessions shall receive the approval of the President of the United States. I can not conceive how any human being can object to that most just and reasonable provision. For myself, Mr. Speaker, I would much rather the amendment provided that all grants of franchises should receive the approval of the Congress of the United States before becoming operative. The bill which recently passed this House providing a civil government for the Hawaiian Islands provides that no franchises shall be granted in those islands which do not receive the approval of the Congress of the United States. This amendment simply provides that all grants of Porto Rican franchises shall receive the approval of the President of the United States in addition to the approval of the governor of the island.

The third section of the joint resolution, or second amendment, provides that certain restrictions, necessary restrictions, shall be thrown around the granting of these franchises. For instance, it provides that no corporation shall be chartered in Porto Rico for the purpose of carrying on the business of agriculture, and that no corpora-

tion shall be chartered for the purpose of engaging in the buying and selling of real estate. It is well known to the members of this House that the island of Porto Rico is only about 95 miles long and about 35 or 40 miles wide.

It is well known that also it contains a denser population than any other country on the globe, and that only a small part of the soil of the island is adapted to the cultivation of sugar cane. Unless these amendments are adopted I believe that it is almost certain that within the shortest period possible after the government provided for in the act of April 12 has been organized and put into operation the great corporations of this country will own every single acre of the sugar and tobacco lands of this most fertile island. And if that shall become the case, then the condition of the population will, I believe, be reduced to one of absolute servitude. The people of Porto Rico will be driven to cultivate these lands for these corporations at whatever daily wage they choose to pay them.

Therefore it seems to me that it is not only preeminently just that this amendment should be adopted, but that the necessity for immediate action should be apparent to everyone who would not like to see these poor people despoiled of their homes. Objectionable as the Porto Rican act is to me, Mr. Speaker, there is no feature of it nearly so objectionable as this, and no provision of it so open to abuse as I believe section 32 to be. Unless these amendments prevail it will be within the control of an executive council of eleven, only five of whom are required to be native inhabitants of the island of Porto Rico, to dispose, with the approval of the governor, of every valuable franchise in that island.

Such unrestricted power as the Porto Rican act gives to the executive council has never before been conferred in any Territorial act passed by Congress since the establishment of our Government. Therefore, Mr. Speaker, it seems to me that it is absolutely necessary, if we do not want to leave the people of Porto Rico in a position which, in all probability, will result in the loss of their lands and homesteads, and make slaves of them, too, that we should sustain the action of the Committee on Insular Affairs in its efforts to so amend this joint resolution as to safeguard and restrict the granting of their

franchises. I do not believe it possible to pass any independent legislation having the same purpose in view.

Again, I express the fervent hope that gentlemen on this side of the Chamber, at least, will agree with the minority members of the Committee on Insular Affairs, that this legislation is not only highly proper, but imperatively necessary.

(Page 4619)

Mr. James R. Williams. Now, in regard to the particular operation of the amendment objected to by the gentleman from Connecticut. It reads as follows:

No corporation shall be authorized to conduct the business of buying and selling real estate, of issuing currency, or of engaging in agriculture, or permitted to hold or own real estate, except such as may be reasonably necessary to enable it to carry out the purposes for which it was created.

It had come to the knowledge of some members of the committee that there were men in this country already preparing to organize companies for the purpose of buying and selling real estate in the island of Porto Rico.

Mr. Speaker, when I remember the limited territory in Porto Rico and the density of the population, we can see that this provision is much more necessary for the people of Porto Rico than it would be for the Western territory, where the people are more thinly settled.

Now, he objects also to the last three lines, which read:

Corporations, other than those organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

What would be the use of providing that there should be no corporations organized in Porto Rico buying and selling real estate in that island and then permit the Connecticut corporation to go down there from the gentleman's own State, organized for this very purpose, and buy all the mortgages down there and become the owners of the real estate of that island? It is a wise provision and ought to

remain in the bill, and if you take it out you might as well strike out the entire amendment. (Applause.)

Does the gentleman claim that there now exists any corporations in Porto Rico which are not subject to the legislation of Congress; that any corporation has vested rights over and above the powers of Government? Mr. Speaker, I claim that the time has come when, if the legislative powers of this Government shall fail to put proper restrictions upon centralized capital in the form of corporations holding by their charters almost perpetual official existence and unlimited powers—I say if we fail to put wholesome restrictions upon these corporations, then we will compel the people in self-defense to find some way of abolishing every corporate charter that the law may have granted.

(Page 4620)

I say that the amendments to this joint resolution should be sustained by both sides of this Chamber, and I believe they will be. I would enact restrictions still more drastic than these. But I am glad to know that upon both sides we have men who foresee the dangers which are now threatening the people everywhere by reason of unrestricted privileges of chartered companies.

Even though it is rather late, I am glad to know that within two weeks, we might say, from the time we have legislated granting these unlimited privileges to incorporated companies in Porto Rico we are already aroused to the dangers in this direction and are bringing in this provision to put restrictions upon them for the protection of the people of this island at least. And the grandest of all things in connection with this amendment is the provision which reserves to the public the right of taking over at any time the property of any public corporation at its par value. These right belong to the people and the law should ever hold them inalienable. (Applause.)

Now, as to the agricultural lands being taken up by corporations. This particular clause of the amendment is proposed by the com-

mittee because of the peculiar conditions prevailing in the island. This island, as is perfectly understood, is a hundred miles long and about forty broad. That is to say, it is no wider than the distance from here to Baltimore and about twice that distance in length. In connection with this matter, General Davis, in charge of the civil affairs on the island, on page 12 of the testimony says:

Mr. Crumpacker. How are the lands held there—in large tracts or in small tracts?

General Davis. Usually in small tracts. The population, you see, is 1,000,000, and the subdivisions of the land have been very numerous. Inheritances have resulted in subdivisions, so that you find blocks of 2 acres and 3 acres and 5 acres and 10 acres and 20 acres. There are a few larger tracts in some instances—the tracts of 200 or 300 or 400 or 500 acres; and of sugar-cane farms you may find tracts as large as 2,000 or even 3,000 acres, but such are uncommon.

Now, it is because of the peculiar condition down there and of the fact, as I think, that there is but one foreign corporation, and that an English corporation, engaged in the sugar-cane growing business—

Mr. Hill. Will the gentleman pardon me? Does he not also know that General Davis said that the only possible successful outcome of the sugar industry was through the aggregation of capital by corporations and by central mills? I have not the language before me, and I do not wish to take the gentleman's time.

Mr. Cooper of Wisconsin. It is immaterial what anybody testified to. The committee are of the opinion that it would not be for the interest of a million people, crowded upon a territory 100 by 40 miles in extent, to have one corporation own all, or substantially all, the land. People there can not cross imaginary state lines and go into other states as they can here in crowded and populous communities. There, when they get to the margin of their territory, they are met by the ocean. They can not go anywhere. They are obliged to stay in the island of Porto Rico, and the ownership of the land has a special significance in that limited and crowded space.

Therefore, this legislation must not be taken as establishing a precedent for legislation anywhere else. We establish this legislation for Porto Rico because of the conditions that obtain in that crowded

island, and I repudiate utterly the suggestion of the gentleman from Connecticut (Mr. Hill) that he is opposed to these amendments because he has confidence in human nature, and because Congress ought to have confidence in the people and in the business interests of the United States. You could say that and do away with the Constitution of the United States. You can say that and do away with the constitution of every state. That has always been the plea of tyranny, and it is the plea put forth to-day in behalf of the Czar of Russia that he does justice to his subjects and never will do them wrong, though he has unlimited power.

PLAINTIFF'S EXHIBIT 2.

30TH ANNUAL REPORT OF THE GOVERNOR OF PORTO RICO, HON. THEODORE ROOSEVELT TO THE SECRETARY OF WAR, DATED AUGUST 21, 1930.

Pages 5 and 9.

"Economically, our condition was equally bad. More than 60 per cent of our people are out of employment either all or a part of each year. The average yearly income of the working man or woman ranges between $150 and $200. Hundreds come to the government offices weekly, with but a single request,—work. They do not ask for a dole, merely the opportunity to earn a livelihood. This condition has been brought about a number of different factors. To begin with, we have a population of 440 to the square mile. That means that we must practice intensive agriculture. In Porto Rico the lowlands are held in large measure in big farms, either by companies or individuals. We have too few small farmers. This condition is not new. It has always existed to a large extent, though now it is worse. In the last century much of the property was owned in Spain. Now much is owned by sugar companies in the continental United States, though some is still owned in Europe.

It is axiomatic that the small farm holder is the basis of society. Our endeavor, therefore, must be to aid such as exist and to strive to put back on the land again on farms owned by themselves, as many of our people as possible.

"Due to the density of the population, the government of Porto Rico had hardly any public land, and such as was suitable for farming has now been exhausted. We therefore decided to extend the scope of the Commission by buying cheap land from large holders and using it for homesteading purposes. We accordingly provided an issue of $500,000 worth of bonds in the last Legislature for this purpose."

PLAINTIFF'S EXHIBIT 3.

THIRTY-FIRST ANNUAL REPORT OF THE GOVERNOR OF PUERTO RICO, HON. THEODORE ROOSEVELT, TO THE SECRETARY OF WAR. DATED AT THE GOVERNMENT HOUSE, SAN JUAN, PUERTO RICO, SEPTEMBER 1, 1931.

Pages 7 and 8.

"We feel that one of the basic troubles in Porto Rico lies in the fact that so much of the land, especially on the coastal plain, has gravitated into the hands of a comparatively small number of large landholders. We regard as basic the principle that the country is happiest which is populated by farmers living on and cultivating the land which they own. Our policies, therefore, have been specifically directed towards the building up of the small farmers. Wherever possible, we have directed governmental machinery to this end. Part of this work has been carried on through the schools, where we are turning out attention to the training of the children, and where we hope to be able to extend the work in certain phases to the surrounding adults; part through the Department of Agriculture, wherein we are directing our policy towards the pushing of education in such crops as lend themselves most readily to profitable cultivation on small properties."

PLAINTIFF'S EXHIBIT 4.

ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDING JUNE 30, 1937.

Pages 327, 328, 329 and 330.

SUGAR PROGRAM.

Sugar is the backbone of Puerto Rico's economic life. Annually its agriculture, processing, and transportation represent a business turn-over of millions of dollars. Yet the industry has brought serious problems.

From a technical standpoint it is efficiently run. The criticism which it faces from a sector of Puerto Rican opinion relates to its social aspects. The four largest companies, while American, are absentees as far as Puerto Rico is concerned. Others are of Spanish ownership and therefore absentees from the national, American economy, as well as from the insular economy. The profits of these enterprises are taken away from the island and the political power of the companies frustrates adequate assessment and taxation. Moreover, the sugar industry—of necessity a large scale industry—has led to the progressive concentration of the best lands in fewer and fewer hands. The resulting large and holding is in contravention of the will of Congress, expressed 37 years ago and reaffirmed in the Organic Act limiting corporations engaged in agriculture to ownership of not more than 500 acres of land. (The validity of this legislation is for the first time being tested in the courts.) Below the larger agricultural-industrial sugar enterprises in the insular social structure are the colonos or cane farmers, independent cultivators whose holdings range from a fraction of an acre to over thousand acres. These colonos deliver their cane to one of the company mills where it is ground and payment made on a basis of total quantity delivered plus sucrose content. The colonos have been emphatic in asserting a disadvantage in dealings with the larger corporate enterprises; that the virtual monopolies of these centrales resulted in unfavorable contracts to the growers; that credit conditions imposed upon them were oppressive. At the bot-

tom of the sugar scale are the agricultural workers, poorly paid, inadequately housed, seasonably employed during the 5 months of the cane cutting season, and uprooted and unremunerated during the other seven. The great excess of population and labor supply makes betterment of their condition through unionization or collective bargaining difficult to attain.

The sugar program of the Puerto Rico Reconstruction Administration has been directed along the line of demonstrating through the yard-stock method that these problems might be corrected. For this purpose, the Central Lafayette with properties covering three municipalities in the southeastern part of the island, under French ownership for almost a century, was acquired in December 1936. It is noteworthy that this property was 100 percent absentee-owned both as regards the national and the insular economy. That was one impelling factor in its selection for purchase. The property includes a modern raw sugar factory of 2,500 tons daily grinding capacity, 10,040 acres of land owned and approximately 8,000 additional acres under lease, leases also acquired. The property includes also railroads, rolling stock, work cattle, and other material and equipment essential for operation. To achieve the objectives of the sugar program, the following set-up was adopted:

(a) Distribution of the land among laborer's cooperatives, and to resettled colonos.

(b) Operation of the mill on a cooperative basis, membership of which was to be the land cooperatives and colonos who had formerly ground their cane in this mill. This group numbered more than 300, the great majority of whom cultivated less than 10 acres each.

To carry out the above, a cooperative, the Asociacion Azucarera Cooperativa Lafayette, was organized by a group of the farmer-colonos on November 19, 1936, and a month later, simultaneously with the purchase of the sugar properties, this cooperative assumed title, and obligated itself to pay to the Puerto Rico Reconstruction Administration the full purchase price of the mill properties. One million three hundred and sixty-three thousand one hundred and ninety-nine dollars and forty cents was the amount paid for the mill property which will be amortized over a period of 20 years

with payment of principal to begin in 1940 and with interest at 3 percent. The Puerto Rico Reconstruction Administration holds a first mortgage on all property as security for this loan. An additional advance of $261,841.12, secured by a lien on the industrial benefits of operations, was extended to the cooperative for initial operating expenses.

On December 11, 1936, eight land cooperatives were organized from among the agricultural workmen. A total of 3,006.91 cuerdas of land has been transferred to these eight land cooperatives, together with the cane growing at the time of the transaction, representing a total value of $1,543,741.51. These land cooperatives also purchased and hold in joint ownership the livestock, agricultural implements, and other movable property necessary for the field operations. The Puerto Rico Reconstruction Administration holds as security for these loans a first mortgage on all this property, and in addition the mill cooperative and the several land cooperatives have entered into a management agreement with the administrator of the Puerto Reconstruction Administration whereby their interests will be handled by the manager of the mill cooperative, who is a P.R.R.A. employee, thus securing a central and efficient management. The balance of the land is being held by the administration for organizing additional land cooperatives so that every worker's family in the Lafayette area may be given the opportunity to participate in the enterprise and to become a small home owner. Meanwhile this land, destined for future cooperatives, is being cultivated for the account of the administration by the centralized management.

As an integral part of membership in the land cooperatives, a resettlement program, designed to give better living conditions to the labor members, has been inaugurated by the P.R.R.A. and land has been set aside for the building of approximately 1,000 laborers' homes. The first 300 houses are under construction. Each family will be given sufficient land for gardening and for raising small livestock and poultry. Payment will be amortized over a period of years. A central service farm has been established to assist the resettled laborers, as well as the colonos who are members of the mill cooperative, with their agricultural problems. The first build-

ings have been erected. Three vocational schools, to be operated by the insular government, have been erected within the district and a new modern hospital is being built at the Central for the benefit of the laborers, the other employees, and their families. At the end of the first year's operations, June 30, 1937, the cooperative ground 257,110.27 tons of cane and manufactured 258,308 bags, 250 pounds each, of raw sugar. The average yield was 12.69 percent. Of this amount, 76,383.27 tons of cane were delivered from the land of the agricultural cooperatives, the balance from the lands held by the Reconstruction Administration and by independent colonos on their own property. Despite the fact that management of the properties was not acquired until January 1, 1937, and consequently no control was had over initial operating expenses, the project will show a profit of over $200,000 on the first year's business.

The acquisition of Lafayette, which was a totally absentee-owned property sending its profits abroad to a single family, is an important move seeking to rectify the most criticized social aspects of the sugar industry in Puerto Rico. Assuming management to be successful, it should result in—

1. Keeping the profits on the enterprise in Puerto Rico.
2. Elimination of exploitation.
3. Improved housing, sanitation, and social service, tending to establish higher standards of social responsibility among sugar enterprises generally.

In the rehabilitation program as first proposed in Puerto Rico, as presented to the Reconstruction Administration and widely publicized, the purchase of a number of mills simultaneously was recommended, as well as their transfer to the hands of colonos. The Reconstruction Administration after careful consideration modified both proposals. It limited itself, for the present, to the acquisition of one mill in behalf of cooperatives, in the belief that prudence dictates a careful exploration of the possibilities of operation of one such enterprise before any wholesale embarkation on a program obviously so administratively difficult and fraught with important consequences. Second, it rejected the ideal of loaning substantial sums of public money solely for the rehabilitation of a relatively

limited group of farmers, some of them substantially well-to-do, to the exclusion of a great body of landless and indigent agricultural workers whose distressed condition under this plan would have remained virtually unmodified. The fundamental objectives—the correction of social weaknesses inherent in the rapid development of the Puerto Rico's indispensable part-sugar economy—are, however, maintained unqualifiedly.

PLAINTIFF'S EXHIBIT 5.

(19 P.R.R. 143.)

Compania Azucarera de Carolina, Appellant,

v.

The Registrar of Property, Respondent.

Appeal from a decision of the Registrar of Property of San Juan, Section 1.

No. 125.—Decided February 27, 1913.

The Registrar of Property of San Juan, Section 1, refused to record a deed in favor of an agricultural company for the reason that it appeared from the registry that said corporation had recorded already in its favor more than 500 acres of land and that every acquisition of land in excess of that amount was in violation of the Joint Resolution of Congress of May 1, 1900, amending the Foraker Act, and it not appearing that the new acquisition was necessary for the purpose for which the corporation was created, Held:

Corporations—Limitation of Right to Hold Lands—Aliens—Escheat—Inquest of Office—Office Found.—In the United States corporations and foreigners are placed by law in the same class in this respect, and although they are prohibited or limited as to the possession of lands, they have full power of ownership of the lands until the Government or the State intervenes. The proceeding against aliens to secure the escheat of lands is known as 'inquest of office' and 'office found.'

ID.—Titles of Corporations.—Such corporations may sue in eject-

ment or unlawful detainer and demand specific performance of contracts, for their titles are good as against all the world except the State.

ID.—Limitation of Right to Hold Lands.—The Organic Act does not prohibit the acquisition of lands but limits the ownership and control thereof to 500 acres.

ID.—Registrars of Property.—Record of Title.—A registrar is bound to record a conveyance to an agricultural corporation although the law forbids the ownership and control of more than 500 acres. The law only requires the registrar to examine the documents submitted to him and the previous history of the property in question.

ID.—Attorney General.—Proceedings for Escheat—Ultra Vires.—The Attorney General is the official authorized by the Organic Act in connection with the Revised Statutes of the United States to initiate proceedings against corporations which perform acts ultra vires. Section 73 of the Political Code is to the same effect.

ID.—Construction of Deeds.—Limitation of right to Hold Lands—Presumption.—The silence of a deed with respect to certain exceptions to the limitation established by the Organic Act does not preclude the possibility of the existence of such exceptions. The same may be said of the supposed violation of the charter of a corporation.

Ownership—Record of Title.—No one is bound to record his property in order to acquire the full ownership thereof.

Registry of Property.—Questions of Fact.—The registry is not the place in which to try matters involving disputed questions of fact.

The facts are stated in the opinion.

Messrs. Bosch & Soto for appellant.

The registrar did not appear.

Mr. Justice Wolf delivered the opinion of the court.

On April 16, 1912, the Compania Azucarera de la Carolina presented two deeds to the registrar of property of this city. These deeds were conveyance of lands from Rosales & Compania in favor

of the appellant. The registrar refused the record in each case in the following note:

"The record of the foregoing document is denied because as it appears therefrom that the grantee is a corporation organized in accordance with the laws of Porto Rico it is absolutely necessary to have at hand the charter thereof to determine the legal capacity of said corporation with respect to its power to acquire land, because if the Carolina Sugar Company is a corporation engaged in agriculture, as it already appears to have recorded in its favor in this office five hundred and 50/100 acres, the acquisition, object of the presentation, is therefore null and void because it is in violation of the provisions set forth in section 3 of the Joint Resolution of Congress of May 1, 1900; and even in the supposition that such corporation is not engaged in agriculture it would be subject to the same prohibition inasmuch as it does not appear that this new acquisition is reasonably necessary to permit the grantee to carry out the purposes for which it was created."

The law to which the registrar refers is as follows:

"Section 3.—That all franchises, privileges or concessions granted under section 32 of said Act shall provide that the same shall be subject to amendment, alteration or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends; and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land;

and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Puerto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable."

The question presented by the appellant is whether under the Foraker Act and the laws in force in Puerto Rico the registrar has power to refuse the record of an instrument where it appears from the registry that a particular agricultural corporation has more than 500 acres of land.

Article 18 of the Mortgage Law is as follows:

"Registers shall determine, under their responsibility, the legality of the documents by virtue of which the record is requested, and the capacity of the parties interested by what appears from said documents.

"All the documents issued by judicial authorities shall also be determined by them under their responsibility, and for the sole purpose of admitting, suspending, or refusing their record or entry.

"There shall be no further remedies than those mentioned in this law against the suspension or refusal of a record or cautionary notice, judges of courts by virtue of judicial documents not being permitted to compel the registers in any other manner to record or enter."

Article 6 provides:

"The record of instruments in the registry may be demanded indiscriminately:

"By the person conveying the interest;

"By the person acquiring the same;

"By any person interested in securing the interest which is to be recorded;

"By the person who is legally authorized to represent any of the above."

And by article 18, as we have seen, the legality is to be determined from the documents, taking into account, in accordance with section 17, the other records relating to the same property.

We shall first seek to determine the nature of the interest here sought to be recorded by the appellant corporation.

In *Fritts* v. *Palmer*, 132 U. S. 282, the right of a foreign corporation to acquire real estate in Colorado was involved and the court held that perhaps the reasonable interpretation of the statute was that a foreign corporation should not purchase or hold real estate in Colorado until it should acquire, in the mode prescribed by the local law, the right to do business in that State. But that deed was not thereby necessarily made absolutely void as to all persons and for every purpose, inasmuch as the constitution and laws of Colorado did not prohibit foreign corporations from purchasing and holding real estate within its limits.

Mr. Justice Harlan reviews the authorities in that case which show that where a corporation is to take title to real estate a conveyance to it is not void but only voidable, and the court goes on to say:

"To the above case may be added those holding that an alien may take by deed or devise and hold against anyone but the sovereign until office found. *Cross* v. *De Valle*, 1 Wall., 1, 13; *Governeur* v. *Robertson*, 11 Wheat., 332; *National Bank* v. *Matthews*, 98 U. S. 621, 628; *Phillips* v. *Moore*, 100 U. S. 208. Also, those holding that the question whether a corporation, having capacity to purchase and hold real estate for certain defined purposes, or in certain quantities, has taken title to real estate for purposes not authorized by law, or in excess of the quantity permitted by its charter concerns only the State within whose limits the property is situated. It cannot be raised collaterally by private persons unless there be something in the statute expressly or by necessary implication authorizing them to do so. *Cowell* v. *Springs Co.*, 100 U. S. 55, 60; *Jones* v. *Habersham*, 107 U. S. 174, 188."

So that aliens and corporations are treated alike with respect to capacity in taking and holding lands. This decision is reviewed and affirmed in the case of *Blair* v. *Chicago*, 201 U. S. 450, 451.

In the case of the *National Bank* v. *Matthews*, 98 U. S. 628, it was held that where a corporation is incompetent by its charter to take a title to real estate a conveyance to it is not void but only voidable and the sovereign alone can object. Comparison is there made to aliens who may hold until office found. This case was reviewed and affirmed in *Kerfoot* v. *Farmer's and Merchants' Bank*, 218 U. S. 287.

Similarly, it was held in *Cowell* v. *Springs Co.*, 100 U. S. 60, that where a particular conveyance was necessary for a corporation to enable it to carry on its business it was a matter between the State and the corporation and was no concern of a private person. And in *Phillips* v. *Moore*, 100 U. S. 208, it was held that by the common law an alien could not acquire real property by operation of law but might take it by act of the grantor and hold it until office found; that is, until the fact of alienage is authoritatively established by a public officer upon an inquest held at the instance of the government. It has been shown in that opinion that the proceeding which contained the finding of the fact upon the inquest of the officer was technically designated in the books of law as "office found." It removed the fact upon the existence of which the law devested the estate and transferred it to the government from the region of uncertainty and made it a matter of record. It was devised, according to the old law writers, as an authentic means to give the king his right by solemn matter of record without which he in general could neither take nor part with any thing; for it was deemed "a part of the liberties of England, and greatly for the safety of the subject, that the king may not enter upon or seize any man's possessions upon bare surmises, without the intervention of a jury." A like decision was handed down in the case of *Jones* v. *Habersham*, 107 U. S. 188.

In *Louisville School Board et al.* v. *King*, 15 L.R.A. (N.E.) 379, it was held that a third person buying from a corporation holding escheatable land was protected until some appropriate step was taken by the State. In Kentucky, where the case arose, banking companies.

were prohibited from holding lands for more than five years except for their legitimate purposes under penalty of escheat, and the court found that neither by the constitution nor the statute was it declared that the corporation should be devested of, nor the State vested with, the title, and the question of whether the property was useful or useless in the corporate business was one outside of the record. The authorities are reviewed on page 385 as well as in a note to the same case beginning on page 379. Specific performance was decreed in this case.

Other cases treating of the general question are *Wunderle* v. *Wunderle*, 19 L.R.A. 84 and *Lancaster* v. *Amsterdam Improvement Co.*, 24 L.R.A. 322.

Under this rule a corporation has variously been held to have all the powers that an individual may possess. For example, in *American Mortgage Co.* v. *Tennille*, 12 L.R.A. 529, it was held that where a corporation forbidden by law to hold more than 5,000 acres bought a promissory note secured by a deed of the land and took a conveyance from the holder for said land, although the corporation then owned more than 5,000 acres, it was decided that the conveyance was good. Other cases on the general principle are cited in the notes to that case.

It has frequently been held that it is no defense to an action of ejectment by a corporation that a larger amount of land had been conveyed to it than it was authorized to take. *Bank* v. *Railroad Co.*, 17 Wis. 372; *Glass Co.* v. *Dewey*, 16 Mass. 94, 102; *Mining Co.* v. *Baker*, 3 Nev. 391; *Mining Co.* v. *Clarkin*, 14 Cal. 552. In the last-mentioned case Mr. Justice Field, speaking for the court, says:

> "Whether or not the premises in controversy are necessary for these purposes (of the corporation), it is not material to inquire; that is a matter between the government and the corporation and is no concern of the defendants. It would lead to infinite inconveniences and embarrassments if, in suits by corporations to recover the possession of property, inquiries were permitted as to the necessity of such property for the purposes of their corporation and the title made to rest upon the existence of such necessity."

The court says in *Mining Co.* v. *Baker*, 3 Nevada 391, after discussing the question:

> "A deed, then, to a mining corporation is not void upon its face. If they have violated the law in taking a greater quantity of land than is allowable, then they have committed a wrong, not against any particular individual, but against the whole community, and this wrong can only be inquired into by a proceeding on the part of the State. Their deed to the land, if they buy from one having title, or their possession, if they only derive title from occupation, gives them a right to hold against all the world except the State."

Numerous other cases are cited and reviewed in the case of *Southern Pacific R. R. Co.* v. *Orton*, 32 Fed. 457. In that case and in Thompson on Corporations, paragraph 5796, it is shown that the rule enables a corporation which has received a grant of land to maintain an action against a trespasser to recover possession of it; and the trespasser will not be heard to question the title of the corporation on the ground that it has no authority to take the lands.

Cases showing other powers can be found in 10 Cyc. 1138, and in the citations of *Fritts* v. *Palmer*, *supra*, in Roses Notes to the United States Reports, volume 11, page 836.

Thus it may be seen that a corporation limited by the law or by its charter has until the State acts every power and capacity that any other individual capable of acquiring lands possesses. The corporation may exercise every act of ownership over such lands; it may sue in ejectment or unlawful detainer, and it may demand specific performance. It has an absolute title against all the world except the State after a proper proceeding is begun in a court of law. The provisions of law in Puerto Rico are no different. The Foraker Act does not prohibit the acquisition of land, but says that a corporation engaged in agriculture shall by its charter be restricted to ownership and control of not to exceed 500 acres of land.

Under the Mortgage Law the registrar is only given power to examine the legality of the document submitted to him, and by article 6 of that law, cited above, he is required to record any interest that

a corporation may have; hence he is bound to record the conveyance to the corporation no matter whether its charter forbids the holding or not. The law does not forbid the acquisition of more than 500 acres nor is there any provision forbidding corporations to acquire lands. The registrar is only required to examine the documents that are submitted to him and the previous history of the land in question. There is no provision in the law which make it incumbent upon him to search through his records to find whether a particular corporation has already recorded more than 500 acres of land.

The Organic Act in section 21 provides that the Attorney General will have all the power and discharge all the duties provided by law for an attorney of the Territories of the United States, in so far as the same are not locally inapplicable.

And by section 771 of the Revised Statutes of the United States, among other duties it is made the duty of every district attorney to prosecute all civil actions in which the United States are concerned, and by other sections attorneys for the Territories are given the same powers as the United States district attorneys, so that its provisions would seem to determine who is the officer who shall look after the interest of Puerto Rico and who shall bring actions to recover any fine of forfeiture.

Moreover, by section 73 of the Political Code, as it has been amended by the laws of 1906, it is provided that the Attorney General, upon the request of the Commissioner of the Interior, shall institute suits for the discovery of all immovable and movable property to which The People of Puerto Rico may be entitled under the laws of escheat, or in and to which it has any other claim.

So that ample provision is made in the law by which any violation of the Organic Act may be thoroughly investigated and prosecuted by the Attorney General. If there is any doubt how far the powers of the registrar extend, it is made clear by the provisions of the Organic Act and by section 73 of the Political Code. The Attorney General is the exclusive officer in whom is confided the right to initiate proceedings for escheat or attack the right of a corporation to hold land. Without some such judicial or quasi-judicial proceedings

a corporation might be deprived of some of its property rights without due process of law.

The fact that a particular deed is silent does not give the registrar the right to conclude that the corporation may not have conveyed a part of the land already recorded. No man is bound to record his property in the registry of titles, and a grantee of a corporation might delay indefinitely in recording such transfer or conveyance. There might be a misdescription in the registry and the corporation might, in point of fact, hold less than 500 acres.

Furthermore, the statute permits the corporation to take conveyances of property in payment of debts. The fact that the deed is silent on such a matter is not a presumption that the property was not so taken. All such matters should be inquired into in a plenary proceeding before a court, as provided by law, where both the government and the corporation might have a chance to be heard. Other inconveniences of having the registrar act are also apparent. If, for example, a corporation had 300 acres of land in the district of Humacao and 300 acres of land in the district of Caguas, both records could be made as neither of the registrars would have access to the records of the other. So that one corporation that happens to have all its lands in one district may be refused registration of a part, while an agricultural corporation that has its lands scattered would secure their complete registration.

At times a registrar has thought that he had a right to question a finding or order of the court, but it has always been decided that his powers in that regard are strictly limited. The Supreme Court of Spain, by its judgment of October 15, 1871, held that the registrars were limited in their powers by articles 18 and 65 of the Mortgage Law, beyond which they cannot go without committing a dangerous intrusion into that which belongs to a court of justice. We have steadily held that a registrar had no right to question the facts or proof investigated by a court or inquire into the justice of the decision. *Ramirez* v. *The Registrar*, 16 P.R.R. 330; *Fernandez* v. *The Registrar*, 17 P.R.R. 1021; *Ramos* v. *The Registrar*, 18 P.R.R. 16; *Rivera* v. *The Registrar*, 14 P.R.R. 249. These decisions make it more evident

that the registry is not the place to try matters that involve disputed questions of fact.

For these reasons the note of the registrar must be reversed.

Reversed

Chief Justice Hernandez and Justices MacLeary, Del Toro and Aldrey concurred.

PLAINTIFF'S EXHIBIT 6.

(19 P.R.R. 724)

Compania Azucarera Del Toa, Appellant,

v.

The Registrar, Respondent.

No. 147.—Decided June 19, 1913.

Agricultural Corporation—Limited Holding of Land.—The appellant corporation presented in the Registry of Property of San Juan, Section 2, a deed of purchase of some 700 acres of land which the registrar refused to admit to record on the ground that the said acquisition was an infraction of section 3 of the Joint Resolution of the United States Congress of May 1, 1900, amending the Foracker Act. It was held that the decision of the registrar should be reversed on the grounds of the opinion rendered in case No. 123, Campania Azucarera de la Carolina *v.* The Registrar of Property of San Juan, Section 1, ante page 143, for the reason that in a case of this kind the acquisition at one time by an agricultural corporation of even more than 500 acres of land is valid against all the world until the Government takes action.

The facts are stated in the opinion.

Messrs. Bosch and Soto for appellant.

Mr. Jose Benedicto, registrar, appeared *pro se.*

Mr. Justice Wolf delivered the opinion of the court.

In this administrative appeal the only facts that distinguish it from case No. 123, *La Compania Azucarera de la Carolina* v. *The Registrar of Property of San Juan*, Section 1, ante, p. 143, are that here it appears that the appellant is asking the registrar to record at one time

a transfer to it of some 700 acres. But one of the principal reasons we had in the said case for reversing the note of the registrar was that until the Attorney General acted or, in other words, the Government, an agricultural company had a good title against all the world. This was made apparent not only by our own words, but by citations from the Supreme Court of the United States. Hence, the fact that the corporation appears to be acquiring more than 500 acres makes no difference.

For this reason, and others assigned in the opinion in said case No. 123, *La Compania Azucarera de la Carolina* v. *The Registrar of San Juan*, the note must be reversed.

Reversed.

Chief Justice Hernandez and Justices del Toro and Aldrey concurred.

Mr. Justice MacLeary did not take part in the decision of this case.

PLAINTIFF'S EXHIBIT 7.

(24 P.R.R. 240)

Isabela Grove, Inc., Appellant,

v.

Registrar of San Juan, Respondent.

Appeal from a Decision of the Registrar of Property Denying Admission to Record of a Deed of Sale and Mortgage.

No. 268.—Decided June 24, 1916.

Corporation—Purchase of Real Property—Mortgage—Engaging in Business.—The mere fact that an unregistered foreign corporation acquires and holds real property and mortgages the same to secure the payment of a part of the purchase price does not amount to engaging in business in this Island within the meaning of the Act of March 9, 1911. Sections 37 to 40 of said Act refer to corporations actually engaged in business in Puerto Rico in the ordinary acceptation of the term.

ID.—Name of Corporation—Engaging in Business.—A conclusion of law regarding the business of a corporation cannot be reached by reason of its name.

ID.—Engaging in Business.—It is the province of courts and not of registrars of property to determine whether or not a foreign corporation is engaged in business in Puerto Rico.

ID.—Rights of Corporation.—When a foreign corporation is not expressly forbidden by legislative enactment to make contracts or own lands, it possesses all the rights pertaining to an individual, like any other corporation not restricted by its own charter.

ID.—Invalid Contract—Voidable Contract.—A contract which meets the requirements of Section 1228 of the Civil Code is not void, although if it is unlawful it may be rescinded at the instance of an interested person.

The facts are stated in the opinion.

Mr. Francis E. Neagle for the appellant.

The registrar appeared *pro se*.

Mr. Justice Wolf delivered the opinion of the court.

By sections 37 et seq. of the Act of March 9, 1911, (Session Laws, p. 103 et seq.) foreign corporations, "before doing business within this island," are required to file in the office of the Secretary of Puerto Rico their articles of incorporation, a statement containing among other things for purposes of regulation and control the objects of the business and a consent to be sued and the designation of a person to be sued. Under section 40 the attempt of any foreign corporation to do business in this island without compliance with the preceding sections is penalized by a forfeit of ten dollars a day to The People of Puerto Rico, and it is made the duty of the Attorney General to sue for and recover the said penalty. There is no other penalty provided in the act.

On February 1, 1916, the Isabella Grove, a corporation duly incorporated under the laws of the State of New York, presented for record in the Registry of Property of San Juan a deed transferring to it the title to certain property, and at the same time and in the same deed the said corporation made a mortgage on the said property in favor of William Allan. The respondent refused to record the said deed on the ground that the Isabella Grove, Incorporated, had not shown that it had filed in the Secretary's office the state-

ment, certificate and consent required by the Act of March 9, 1911, previous to doing business in the island, in the absence of which, according to the respondent, the contracts made by the said corporation with regard to real estate lack validity. The respondent says the defect is incurable.

The appellant maintains that the contract or contracts sought to be recorded wherein the foreign corporation acquires land in Puerto Rico are not the doing of business in Puerto Rico and that even if such act or acts should constitute the doing of business therein, it is not the registrar, but only the Attorney General who may object.

The taking of a single deed to property is not doing business in Puerto Rico. *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727; *Bamberger* v. *Schoolfield*, 160 U. S. 149; *International Textbook Co.* v. *Pigg*, 217 U. S. 91; 19 Cyc. 1267 et seq.; 12 R.C.L. 68 et seq.; *State of Kansas* v. *American Book Co.*, 1 L.R.A. (N.S.) 1043. In *Union Central Life Ins. Co.* v. *Gromer*, 19 P.R.R. 871, this court decided that the taking of loans secured by mortgages did not constitute the doing of business within Puerto Rico under the tax laws. We think that sections 37 to 40 were meant to apply to corporations actually doing business in Puerto Rico in the ordinary sense of the word. To consider, for example, the part of the law requiring the naming of an agent for purposes of suit. Yet it is perfectly possible to obtain service against a foreign corporation by publication for any matter involving contracts of the kind sought to be recorded. And again, the requirement that a corporation should file a statement of its business done each year. So far as the deed in this case is concerned, there is no indication that the corporation would ever do another piece of business in Puerto Rico. To require of a corporation an annual report merely because it held a piece of property would be an absurdity. The registrar in his brief concedes that there is nothing in the law to prevent a foreign corporation from owning or holding land, but he asserts that this corporation not only took the land, but immediately mortgaged it, and that the name of the corporation shows that the company will devote itself to agricultural pursuits. A serious question might arise whether a corporation which tills the soil for several years before it makes a ship-

ment of citrus fruits, for example, could be said to be doing business within the intendment of the law; but no one has a right to draw a legal conclusion about the business of a corporation from its name. So far as the giving of a mortgage is concerned, that is such a frequent concomitant of the acquisition of property that if such acquisition is not the doing of business, one of the customary incidents, like a mortgage for the deferred purchase money, could not be considered as an independent act of doing business. To say a person may acquire property and then say he may not encumber it at the time would prevent indirectly, in a vast number of cases, the acquisition of property.

Even if there were a question of whether the corporation was or was not doing business in Puerto Rico, the registry is not the place to pass upon such a disputed question of fact. *Compania Azucarera de Carolina* v. *Registrar*, 19 P.R.R. 143; *Seoane* v. *Registrar of Caguas*, 23 P.R.R. 753. In the former case the principal ground of decision was that the right of a particular corporation under the Foraker Act to hold more than five hundred acres, no matter how flagrant the violation of a law might seem to be, was a matter that could only be inquired into by the government and that a corporation took a perfectly good recordable title which might only be defeated by the proper action of the Attorney General. Similarly, where a corporation is violating the law of March 9, 1911, no duty is imposed on the registrar to correct such a violation. Penalties are imposed by the law itself and it is made the specific, express duty of the Attorney General to enforce them. In no place but a court could the question be tried out of whether the making of a particular contract was the doing of business within the sanction of sections 37 to 40 of the law of March 9, 1911.

Even if it be conceded that the Isabella Grove, Incorporated, is doing business in Puerto Rico, the registrar would have no right to refuse the record. One of the primary objects of the registry is to protect diligent purchasers. The Isabella Grove, even though it had not complied with the law, definitely acquired property which it wanted to protect against all the world. A principal effect of denying the record would be to open the way to fraud. But we agree

with the appellant that the violation of the law is under the control of the Attorney General, directly by prosecution and fines and possibly by other means. Generally when a legislature has wanted to prevent a foreign corporation from making isolated contracts or holding land it has done so in plain language. In the absence of such a revealed intention, a foreign corporation, like every other corporation unrestricted by its proper law, has all the rights belonging to an individual. 12 R.C.L. 47. The registrar maintains that under article 18 of the Mortgage Law it becomes his duty to inquire into the capacity of the contracting parties. But there is no question in this case of the capacity of the Isabella Grove to make contracts. It may or may not be violating the law, but it has capacity to contract, and the registrar concedes that it may acquire lands. The note itself apparently proceeds on the theory that the act of the corporation is void, but we have decided in the two cases cited and others that where a contract fulfills the requisites of section 1228 of the Civil Code it is not a nullity, but if apparently illegal, voidable at the instance of the person or persons who have a right to complain. Against everyone else a purchaser is entitled to protection.

The note must be reversed.

Chief Justice Hernandez and Justices del Toro, Aldrey and Hutchison concurred.

EXHIBIT 8.

(24 P.R.R. 245)

Porto Rican Leaf Tobacco Co., Appellant,

v.

Registrar of Caguas, Respondent.

Appeal from a Decision of the Registrar of Property Recording a mortgage with curable defect.

No. 266.—Decided June 24, 1916.

Corporation—Purchase of Real Property—Engaging in Business.—The acquisition and ownership of real property by an unregistered foreign corporation is not equivalent to engaging in business within the meaning of the Act of March 9, 1911.

The facts are stated in the opinion.
Mr. Andres Mena for the appellant.
The registrar appeared *pro se.*
Mr Justice Wolf delivered the opinion of the court.

The only difference in the principle involved in this case and that of the Isabella Grove v. Registrar of San Juan, Section 2, ante, p. 240, is that there the registrar much more properly recorded the deed with a curable defect. This action emphasizes the fact that questions of this kind are not submitted to the registry. In this case the registrar was probably satisfied independently of the title presented that the corporation had complied with the law, but in the former case the registrar had no personal knowledge one way or another. The actual information from the record in either case was the same. The note of the registrar in this case says that it does not appear that the company was a domestic corporation or authorized to do business in Puerto Rico. As the deed offered was the acquisition of a piece of property, the registrar should have recorded the same without the necessity of an inquiry into whether or not the corporation had complied with the laws regarding foreign corporations, to which class the appellant belonged as shown by the deed. For these reasons and those more extensively set forth in the case of Isabella Grove v. Registrar of San Juan, supra, the note must be Reversed.

Chief Justice Hernandez and Justices del Toro, Aldrey and Hutchison concurred.

EXHIBIT NUMBER 9.

IN THE SUPREME COURT OF PUERTO RICO.

No. 939.

Harry N. Baetjer et als., as Trustees of the Eastern Sugar Associates of Baltimore, Maryland, and The National City Bank of New York, Appellants,

vs.

Registrar of Property of Guayama, Respondent.

Administrative Appeal.

OPINION OF THE COURT.

Delivered by Mr. Chief Justice del Toro.

San Juan, Puerto Rico, June 14, 1935.

This administrative appeal has been taken by Harry N. Baetjer, Clarence K. Bowie, Fred C. Boyce, Louis S. Zimmerman, Harry E. Henneman, Burt O. Clark and Earle T. Fiddler, as trustees of Eastern Sugar Associates of Baltimore, Maryland, and the National City Bank of New York, from a decision of the Registrar of Property of Guayama, which reads as follows:

"Record is denied of the foregoing instrument, which is deed number 87, executed in San Juan, on June 29, 1934, before Notary Jorge M. Morales upon examination of other instruments exhibited therewith, and especially deed No. 36 of March 27, 1934, executed before the same Notary, as it is noted that said deed No. 87 is subject to the following incurable defects: 1st.—Although the entity in this case, Eastern Sugar Associates, claims to be a business trust of the kind generally designated in the American decisions as *common law* or *Massachusetts trusts*, apart from the fact that such entity has no legal personality or civil capacity acknowledged by the laws of Puerto Rico, in view of its organic declaration (declaration of trust), the form and character of its organization and the form and manner in which it is to hold, administer, enjoy and dispose of the properties which are conveyed thereto, it is, in contemplation of Act No. 40 of April 23, 1928, relating to the incorporation and regulation of trust companies, a foreign trust company, and before doing any business in this Island it is bound to comply with the said Trust Company Law, a requirement which it has not shown to have fulfilled and, to judge from the character of its organization, it regards itself as exempt from any compliance therewith, without which compliance it lacks civil capacity to do business in Puerto Rico; 2nd.—In view of the declaration of trust of the said entity, its acquisition of the real property which is conveyed thereto

in the foregoing deed is unlawful and contrary to Act No. 40 of April 23, 1928, relating to the incorporation and regulation of trust companies, for the following reasons: (a) All trust companies or foreign corporations are prohibited from acquiring, holding, or administering real property in trust in Puerto Rico, and they are likewise prohibited from directly or indirectly carrying on any business similar to the trust business; (b) a trust company being involved, and assuming that it were authorized to do in Puerto Rico the business which it proposes, the properties acquired have not been conveyed to it directly by name and hence such property can not be recorded in its favor; (c) a trust company being involved, and assuming that it were authorized to do in Puerto Rico the business which it proposes, the manner in which the trust has been constituted in favor of indeterminate persons is contrary to the provisions set forth in Chapter III, Title III, Book Third, of our Civil Code; (d) even if it were assumed that strictly speaking, the said entity can not be designated as a trust company, it is a foreign entity or company and, therefore, the prohibitions mentioned in the preceding subdivisions (a) and (b) are applicable thereto; 3rd.—Assuming that the said trust can not be characterized as a foreign trust company, then, by reason of its form of organization, it is, in contemplation of our Private Corporation Law, a foreign corporation and in order to do business in Puerto Rico and before doing so it must comply with the said Corporation Law, a requirement which it has not shown to have fulfilled, but on the contrary it considers itself as exempted therefrom, and without such compliance it lacks civil capacity to do business in Puerto Rico. 4th.—Considering the said trust as a foreign corporation, either in the light of our Law of Private Corporations or the Trust Company Law, and it intending according to its declaration of trust, to devote its activities to the exploitation of agricultural estates in Puerto Rico with the end in view of devoting the same to the cultivation of cane, the acquisition made for that purpose, by virtue of the foregoing deed, of agricultural land having an area in

excess of five hundred acres (*cuerdas*), involves a violation of section 3 of the Joint Resolution of the Congress of the United States approved May 1, 1900. 5th.—In the event that the said trust could not properly be considered as a corporation, it appears from the said deed that the shares in the trust, called 'shares of beneficial interest', are to be transferred to and held by the East Porto Rican Sugar Company, which is a foreign corporation, organized and existing under the laws of the State of Maryland, and which is to acquire the status of *cestui que trust* with reference to Eastern Sugar Associates, the latter thereby becoming practically an instrumentality of the former for the possession and enjoyment of the properties acquired in trust, and the right of the East Porto Rican Sugar Company to hold real property in Puerto Rico being limited by the Joint Resolution mentioned in the preceding subdivision 4th, such a limitation is effective not only against said corporation itself, but also against any other entity which in its place and for its benefit acquires any property in violation of the said statutory provision; 6th.—The consolidation of the three hundred and ten estates and of the five centrals acquired by the said trust into a single estate extending from the District of Humacao to that of Guayama, through the towns of Cayey, Caguas, Juncos, Las Piedras, Naguabo, Yabucoa, Gurabo, Trujillo Alto and San Lorenzo, and to the adjacent islands, Vieques and Culebra, is contrary to law for the following reasons: A.—The receiver appointed by the United States District Court for Puerto Rico had no authority to make the said consolidation. B.—It does not appear nor has it been shown whether all those estates: (a) are known by a common name, or (b) constitute a body of mutually dependent properties, or (c) depend on a common center; 7th.—In view of the character and organization of the grantee trust and of the form or manner in which it is to hold the immovables that are conveyed to it, the legal title thereto to be held in favor and in the name of its representatives or trustees in trust for the benefit of its *cestuis que trustent*, whose rights are to be represented by shares transferable on the books

of the trust, it is contrary to the fundamental principles of our civil legislation as regards the possession, use and enjoyment of real property in the exercise of the right of ownership, and to the mortgage legislation as regards the record of those rights; and the record is Denied, further, specifically of the Sale and the Mortgage in so far as the same include and extend over the servitudes identified in the foregoing deed by the letters (*c*) and (*f*), under numbers (1-a) and (1-d), respectively, it appearing from the registry that the same were cancelled by an order of the District Court of Guayama. By reason of the foregoing refusals a cautionary notice has been entered for the statutory period of 120 days in favor of Harry N. Baetjer, Clarence K. Bowie, Fred C. Boyce, Louis S. Zimmerman, Harry E. Henneman, Burt O. Clark and Earle T. Fiddler, in their capacity as trustees of Eastern Sugar Associates and not individually, and of The National City Bank of New York as to their respective purchase and mortgage rights, at folio 57, Vol. 80, of Cayey, property No. 2953, entry letter 'A'. There has been noted the curable defect of not appearing with entire clearness whether or not Central Defensa is included in the consolidation, as in certain parts of the foregoing deed it is stated that it forms a part of the consolidated estate, but its description has been omitted from among the units (*piezas*) which form said consolidated estate."

With the petition of appeal the appellants filed a brief containing 18 pages which was answered by the Registrar with another brief consisting of 152 pages. The appellants then replied with a brief of 42 pages and the respondent filed a counter-brief of 32 pages.

Points (*b*) and (*c*) of the second ground of refusal, and the seventh ground as well, have been withdrawn from argument by the registrar himself. Therefore, there will be no necessity for considering them. The questions to be examined and decided are simplified and clarified in view of the concluding observations in the registrar's brief which we reproduce, as follows:

The first two grounds of the decision are predicated on the basis

that the appellant trust is in Puerto Rico a foreign trust company. The first of such grounds challenges its capacity to do business in this Island and the second contests the validity of the title as being in contravention of certain provisions of Act No. 40 of 1928 (Session Laws, p. 234) regulating trust companies.

The third ground of refusal is alternative. In the event that the trust could not be considered as a trust company, the registrar understands that it should be regarded as a foreign corporation subject to the General Corporation Law of Puerto Rico.

The fourth ground of refusal challenges the capacity of the trust to acquire land in this Island in excess of the limit established by the Organic Act and attributes to the said entity the status of a corporation, whether considered as a trust company or as a corporation, generally speaking.

The fifth ground asserts the applicability to the trust of the constitutional prohibition against the acquisition of land in excess of the limit fixed by law in so far as it may be inferred from the title-deeds that the said trust is an instrumentality of another corporation for whose benefit it functions.

By the sixth ground of refusal the consolidation of the various properties and centrals into a single estate is challenged.

Is Eastern Sugar Associates a foreign trust company?

The law which regulates these companies in Puerto Rico is Act No. 40 of 1928 (Session Laws, p. 234).

Its section 1 provides:

> "This Act shall be known as the 'Trust Company Law' and shall be applicable to all corporations heretofore or hereafter organized for the purpose of engaging in trust-company business in Porto Rico."

Section 2 of the said Act prescribes:

> "The term 'trust company', for the purpose of this Act, means a domestic corporation formed for the purpose of taking, accepting and executing such trusts as may lawfully be committed to it, acting as trustee, in the cases prescribed by law, receiving deposits of money and other personal property, and issuing its

obligations therefor, and lending money on real or personal securities.

"The term 'foreign trust company', for the purposes of this Act, means a corporation organized for the purpose of engaging in trust-company business, under the laws of another Territory or State, or of the United States, or of a foreign country, whether or not operating a trust company at the place of its incorporation."

Let us examine the declaration of trust under which the entity involved was organized. It was executed in Baltimore, Maryland, on January 16, 1934, by Harry N. Baetjer, of Maryland, Fred C. Boyce, of Maryland, Louis S. Zimmerman, of Maryland, Clarence K. Bowie, of Maryland, Edward H. Burke, of Maryland, James A. Stevenson, of New York, and Earle T. Fiddler, of Pennsylvania, and it was formalized (*protocolado*) in accordance with its own terms, in Puerto Rico on March 27, 1934, before Notary Jorge M. Morales. A copy thereof certified by Notary Morales was presented in the registry together with the deed of purchase and sale, whose record was refused.

The said declaration begins thus:

"Whereas, simultaneously with the execution hereof, there has been paid to the Trustees the sum of one hundred dollars ($100) in cash, to be held upon the trusts of this Declaration; and

"Whereas, additional cash and securities, and other property, real, personal or mixed, of any kind or character whatsoever, may be hereafter from time to time transferred to or acquired by the Trustees to be held upon the trusts of this Declaration; and

"Whereas, it is contemplated that the Trustees, as such Trustees, may acquire sugar estates in Puerto Rico with their mills, railroads, cane lands and other appurtenances and cultivate such lands and manufacture sugar molasses and other products in Puerto Rico;

"Now, Therefore, this Declaration witnesseth and it is hereby agreed and declared, that the Trustees shall hold the said one hundred dollars ($100) and any other property and assets of every kind and nature, both tangible and intangible, at any time

acquired or received by them as Trustees hereunder, including, without limitation of the generality of the foregoing, all choses in action and all rights, powers and privileges arising out of or in connection with the said property or the business of this trust; together with the income therefrom and the proceeds thereof (all of the foregoing while so held being hereinafter usually called the 'trust estate') in trust in the manner and with and subject to the powers and provisions hereinafter contained concerning the same, for the benefit of the holders for the time being of the shares of this trust (hereinafter collectively called the 'Shareholders'), according to their respective interests and priorities."

Eleven articles then follow. The first one deals with the organization of the trust. It provides that the business thereof shall be conducted under the name of "Eastern Sugar Associates," such name and the words "this trust" wherever they may appear in the declaration, referring to the trustees as such and not to the trustees personally or to the officers, agents or shareholders of the trust. Its principal place of business shall be located at Baltimore, Maryland. The trustees, subject only to the specific limitations contained in the declaration, shall have the absolute control, administration and distribution of the trust estate and the management of its business. Such business is specified in detail and it may be concluded that it concerns the production of sugar, from the acquisition of the lands and the planting of the cane to the installation and operation of centrals, the procurement of funds and entering into such contracts and operations as may be necessary to attain its object agriculturally, industrially and commercially.

It is provided by Article 7 that, subject to the provisions of paragraph *M* of the preceding Article, the title to all the property of the trust shall be transferred and remain vested in the trustees. The number of the latter shall be not less than seven. They shall receive compensation for their services. One of them shall constitute class C, one-half of the remaining number Class A, and the other half Class B. They shall hold office until their death, resignation, removal or legal disqualification. A class A trustee may be removed by the action

of the other trustees belonging to the same class. Similarly as to a class B trustee. In the event there should be only two class A or class B trustees, the power of removal shall be exercised by East Porto Rican Sugar Co., a corporation of the State of Maryland, which in specified cases may also appoint new trustees to fill vacancies.

The third article treats of the officers, agents and committees; the fourth deals with the meetings of shareholders, and the fifth with the shares and shareholders, its various paragraphs providing in part:

1, "Shares in Trust Estate. The beneficial interest in the trust estate shall be in the holders from time to time of transferable shares of beneficial interest.—The shares of beneficial interest originally authorized which may be issued from time to time by this trust in the discretion of the Trustees without the necessity of additional authorization are as follows: 200,000 Preferred shares, of one dollar ($1.00) par value each; 300,000 Common shares, of one dollar ($1.00) par value each;"

3, "This Declaration may be amended from time to time, in the manner provided in Section 9.3, to authorize shares in addition to those originally authorized . . .";

4, "Authorized shares of this trust may be issued from time to time in such amounts as the Trustees may determine, either for cash, services, securities, property or other value, or by way of stock dividend, or in exchange for other shares or securities of this trust at the time outstanding . . .";

6, "Shares of this trust may, in the discretion of the Trustees be acquired by this trust either out of surplus or out of capital . . .";

7, "A register or registers shall be kept under the direction of the Trustees which shall contain the names of the Shareholders and their addresses as supplied by them, and the number of shares held by them respectively, and a record of all transfers thereof . . .";

8, "Every Shareholder shall be entitled to receive a certificate in such form as the Trustees shall from time to time approve specifying the number and class of shares held by him . . .";

and

12, "Shares of this trust shall be personal property entitling the holders only to the rights and interest in the trust estate conferred by the law of Maryland and by this Declaration, and shall not give to the holders any right to receive or possess specific property of this trust for any purposes . . ."

It is provided in Article 6.1 that:

"No partnership is created by this Declaration or by the operations of this trust hereunder. It is expressly declared that, as between the Shareholders, Trustees, officers and agents of this trust, a trust and not a partnership is deemed to be created by this Declaration irrespective of whether any different status may be held to exist as far as others are concerned or in any other respect, and that the Shareholders shall be deemed to hold only the relationship of *cestuis que trustent* to the Trustees, with only such rights as are conferred upon them as such *cestuis que trustent* hereunder."

Article 7 deals with surplus and dividends. It provides in part: "The net profits and surplus of this trust may be determined for any and all purposes on the basis of a consolidated earnings statement and a consolidated balance sheet of this trust and its subsidiary companies, irrespective of whether or not this trust shall have actually received dividends or other payments from none, some or all subsidiary companies."

The eighth article relates to notices, and the ninth deals with amendments, termination of the trust and final disposition of its property. Unless voluntarily terminated before in the manner which is provided, the trust shall continue until the death of the last surviving among the following persons: E. G. Baetjer, 2nd, and T. R. Fiddler, son of E. T. Fiddler, its duration not to extend in any case beyond the period of twenty-nine years, counted from the date of the creation of the trust.

Lastly, the tenth and eleventh articles treat of the interpretation of the instrument and of its formalization (*protocolizacion*) in Puerto Rico.

Let us see now how the said entity has functioned once it was constituted.

In the deed of sale whose record has been refused there appeared Albert E. Lee, as Special Master appointed by the United States District Court for the District of Puerto Rico in the case of *Miller Fertilizer Company* v. *United Porto Rican Sugar Company;* the United Porto Rican Sugar Company, a domestic corporation, represented by its Vice-President Fernando Margarida; Trustees Baetjer, Bowie, Boyce, Zimmerman, Hernneman, Clark and Fiddler of Eastern Sugar Associates; The National City Bank, represented by the officers of its branch at Caguas, Garcia Cabrera and del Rio; the East Porto Rican Sugar Company, a corporation of the State of Maryland, represented by its attorney-in-fact Fernando Margarida, and E. T. Fiddler.

On January 25, 1934, pursuant to an order of the Federal Court, the Special Master sold at public auction all the properties of the United Porto Rican Sugar Co., among them more than thirty thousand acres of land, which were awarded for a price of $3,500,000 to E. T. Fiddler on a bid made by him in accordance with a contract entered into on January 16, 1934, with East Porto Rican Sugar Co., Eastern Sugar Associates, and the National City Bank of New York. This contract is transcribed in full in the deed. It is a lengthy instrument and difficult to summarize. The National City Bank of New York, the principal creditor of the United Porto Rican Sugar Co., made an agreement with the East Porto Rican Sugar Co., of Maryland, the new corporation organized for the purpose of financing with its own resources the contemplated deal, with Eastern Sugar Associates, the trust which would finally take charge of the properties and the business, and with E. T. Fiddler, who was to act as bidder at the said auction and thereafter transfer the property acquired to the trust Eastern Sugar Associates, the latter binding itself to deliver its preferred and common shares to the East Porto Rican Sugar Co., of Maryland, and to mortgage its properties in favor of The National City Bank of New York.

After the sale to E. T. Fiddler had been made, the latter in his turn transferred the properties to the trust, which mortgaged the same to the bank. The trust and the bank applied for the record

of the multiple instrument finally executed, that is, deed No. 87 executed before Notary Morales, in the Registries of Property of Caguas, Humacao and Guayama. The notations entered at the foot of the instrument show that such registration was accomplished without difficulty in the first two registries, above named. It was in the third of those registries where the record was refused, and thereupon the bank and the trustees appealed to this Supreme Court.

In the light of the applicable law, the trust deed of the said entity and the latter's operation, the conclusion must be reached that Eastern Sugar Associates was not organized to devote itself to a general trust business nor has it engaged in such business, and hence that it is not a trust company. It is in itself a trust, constituted in Maryland to be devoted to the sugar business in Puerto Rico.

Is it a corporation? The registrar himself characterizes it as one of the trusts designated in the American jurisprudence as *common law* or *Massachusetts trusts*. And what are these entities?

In the case of *Hecht* v. *Malley*, 265 U. S. 144, 146, Mr. Justice Sanford, speaking for the Supreme Court of the United States, expressed himself thus:

> "The 'Massachusetts Trust' is a form of business organization, common in that State, consisting essentially of an arrangement whereby property is conveyed to trustees, in accordance with the terms of an instrument of trust, to be held and managed for the benefit of such persons as may from time to time be the holders of transferable certificates issued by the trustees showing the shares into which the beneficial interest in the property is divided. These certificates, which resemble certificates for shares of stock in a corporation and are issued and transferred in like manner, entitle the holders to share ratably in the income of the property, and, upon termination of the trust, in the proceeds.
>
> "Under the Massachusetts decisions these trust instruments are held to create either pure trusts or partnerships, according to the way in which the trustees are to conduct the affairs committed to their charge. If they are the principals and are free from the control of the certificate holders in the management of the property, a trust is created; but if the certificate holders are

associated together in the control of the property as principals and the trustees are merely their managing agents, a partnership relation between the certificate holders is created. *Williams* v. *Milton*, 215 Mass. 1, 6; *Frost* v. *Thompson*, 219 Mass. 360, 365; *Dana* v. *Treasurer*, 227 Mass. 562, 565; *Priestley* v. *Treasurer*, 230 Mass. 452, 455.

"These trusts—whether pure trusts or partnerships—are unincorporated. They are not organized under any statute; and they derive no power, benefit or privilege from any statute. The Massachusetts statutes, however, recognize their existence and impose upon them, as 'associations,' certain obligations and liabilities."

The Supreme Judicial Court of Massachusetts, in the case of *Larson* v. *Sylvester*, 185 N. E. 44, 45, decided on March 29, 1933, through Mr. Justice Wait said:

"Speaking generally a trust is not a legal personality. With the exception later to be dealt with, it cannot be sued. It is represented by the trustee. He embodies it. He holds title. He deals with the property in which trust rights exist. Contracts with regard to the rights and property affected by trusts are the contracts of the trustee. He, in person, is liable upon them. He is not acting as representative or agent of another. He is acting for himself, but with fiduciary obligations to others. *Magallen* v. *Gomez* (Mass.) 183 N. E. 833; *Gardiner* v. *Rogers*, 267 Mass. 274, 278, 166 N. E. 763; *Philips Carey Co.* v. *Pingree*, 223 Mass. 352, 111 N. E. 857; *Mayo* v. *Moritz*, 151 Mass. 481, 24 N. E. 1083. Compare *Cothrane* v. *Forbes*, 265 Mass. 249, 255, 256, 163 N. E. 848; *Hussey* v. *Arnold*, 185 Mass. 202, 70 N. E. 87. It differs from a corporation or a partnership. The former is a legal person. The latter, in the law of Massachusetts, is an association of individuals united for transaction of business. The former can be sued as a body corporate in its own name. The latter must be sued, ordinarily, in the names of the partners."

The Supreme Court of California, in the case of *Goldwater* v *Oltman*, 210 Cal. 408, 415, 420, said:

"Upon an examination of the 'Agreement and Declaration of Trust,' which is attached as an exhibit to the answer of the defendant represented by Schweitzer & Hutton, it appears that it was by that agreement that Drascena Productions came into existence. It appears from this declaration of trust that the parties thereto attempted to create a type of business organization usually referred to as a Massachusetts or business trust. Inasmuch as this court has never directly passed upon the validity and legal incidents of this type of business organization, and inasmuch as it appears from the numerous briefs of *amici curiae* on file herein that there are a considerable number of such organizations in California, it seems well that some definite statement of their legal status be made at this time.

"These organizations, commonly denominated Massachusetts trusts, originated because of the hostility of some states toward corporations, and due to the desire of those organizing the same to secure some of the advantages that would be secured by incorporating without incurring the burdens and restrictions resulting therefrom. Due to statutory provisions in Massachusetts prohibiting corporations from dealing in real property, this type of organization reached its fullest development and most extensive use in that state, but, as will appear, has been adopted for use in many other states. The chief advantages of such organizations from the standpoint of those desirous of combining their wealth for business purposes are, that until recently they were, in most states, free from regulation, enjoyed freedom from corporation taxation, and its members enjoyed the freedom from personal liability that is imposed upon partners. This type of organization is nothing more than an attempt to use the old common-law trust for the purpose of carrying on business enterprises.

"Such a trust is brought into being by a declaration of trust, by the terms of which those desiring to invest their capital agree to the creation of a governing group of trustees, the powers and duties of this board being dependent on the terms of the trust agreement. The interest of each subscriber is evi-

denced by transferable certificates, similar to shares of stock in a corporation and, in this state, subject to the scrutiny of the corporation department. The organization does not dissolve as does a partnership upon the transfer of any share, nor upon the death, insanity or bankruptcy of a subscriber. The trust agreement usually provides that the trustees and not the subscribers are the owners of the property, and the trustees are given, in a true Massachusetts trust, complete control of the management of the business. In the trust agreement it is always provided that the subscribers are not personally liable for any of the acts of the trustees, a freedom from liability which, in this state, is even greater than that accorded to stockholders of corporations, except, since 1929, stockholders in limited corporations."

"In the absence of controlling authority to the contrary, we can see no reason why such organizations with their limited liability should not be recognized in this state. It is true that the statutes of this state provide for limited liability in the case of limited partnerships and corporations, but we find nothing in those statutory provisions that manifests an intent to limit the types of business organizations which shall enjoy this privilege to the two types of business organizations enumerated. Section 2220 of the Civil Code expressly states that trusts in personality may be created for any purpose for which a contract may lawfully be made. It is true that until 1929 certain limitations were placed upon the purposes for which trusts in real property might be created by section 857 of the Civil Code, but as stated before, there was no such restriction in reference to trusts in personal property. (*Estate of Walkerly*, 108 Cal. 627; (49 Am. St. Rep. 97, 41 Pac. 772); *Estate of Hinckley*, 58 Cal. 457, 482; *Toland* v. *Toland*, 123 Cal. 140 (55 Pac. 681).) Even the restrictions on trusts in real property have now been removed by a 1929 amendment to section 2220 of the Civil Code. It seems clear to us that the settled legislative policy of this state is to lay no restrictions against the formation

of trusts in personality, but rather to leave open to such organizations the conduct of any lawful enterprise. The law of trusts is just as much a part of the legislative policy of this state as the law of limited partnerships and corporations. It is true that trusts historically were not used for the purpose of running large business enterprises and were a development of the equity courts. The law, however, is not static, but is ever growing and expanding, and in recent years this form of handling property has been extended to nearly every field of activity. (Sears on Trust Estates as Business Companies, 2nd ed., sec. 19; Wrightington on Unincorporated Associations & Business Trusts, 2nd ed., sec. 4.) Just because a new use is being made of the trust does not mean new principles of law are to be applied in determining the rights of the trustees, *cestuis que trust*, creditors of the trust or others that deal with the trust. (*Schumann-Heink* v. *Folsom, supra.*) If this new extension of the use of trusts requires regulation, that is a matter of legislative and not judicial concern. Some states have seen fit to regulate this form of business enterprise by statute. (See Massachusetts Gen. Laws 1921, chap. 290; Oklahoma Sess. Laws 1925, chap. 56; Oklahoma Sess. Laws 1927, chap. 17; Wisconsin Laws 1923, chap. 431.)"

At page 1112 of Volume 16 Fletcher, Cyclopedia Corporations, Permanent Edition (1933), we find the following:

"As a general rule business trusts are created entirely by the act of the parties; they are not organized under, and do not depend on, any statute or statutory sanction for their existence, although in some states they are now recognized by statute, and in many states they are subject to governmental regulation under the statutes. They are, in law and in fact, unincorporated companies.

"The trust or trust estate is regarded as a legal entity for some purposes in some jurisdictions, but not in all.

"Business trusts are not corporations in any strict sense of the term, although they are treated as such for some purposes

by the courts of different states. They are not creatures of statute, but voluntary associations of individuals, while a corporation can only exist by sanction of the legislature, and must either have received a charter or have been organized as a corporation under a general law."

The cases cited by the registrar in support of his contention that the trust involved in the instant case is a corporation are based on different statutes than those in force in this Island. The respondent official himself at page 58 of his main brief, says:

"Although it is true that neither our Corporation Law, nor our Organic Act, nor any other statute in this jurisdiction defines corporations in a similar manner as is done in the statutes of the above mentioned States, the fact is that in view of the privileges and immunities which our law grants to corporations, we may easily arrive at the conclusion that such privileges and immunities are not held either by individuals or by civil partnerships. There is no reason whatever why, notwithstanding the absence from our statutes of a categorical definition of corporations, we may not, in the light of the provisions of our laws, classify within their nature a foreign organization which enjoys the same privileges and prerogatives granted by our laws to such entities."

It is not possible to go that far by mere judicial interpretation, especially there being in force a statute such as Act No. 41 of 1928 (Session Laws, p. 294), to provide for the constitution of trusts, which was approved on the same day as Act No. 40, to provide for the incorporation and regulation of trust companies, and which now forms a part of the Civil Code, 1930 ed., p. 184, sections 834 to 874.

In that act, which has left subsisting the provisions of the Code set forth in Article III, Title III, relating to substitutions in trust (sections 710 to 715, 1930 ed.) and specifically provides that nothing contained in the Act shall be understood to repeal or modify the system of inheritance established by the Code, a trust is defined as an irrevocable mandate whereby certain property is transferred to a person, named the trustee, in order that he may dispose of it as

directed by the party who transfers the property, named the constituent, for his benefit or for the benefit of a third party, named the beneficiary (*cestui que trust*); and it is provided that a trust may be constituted by will or by act *inter vivos* upon property of any kind, real or personal, corporeal or incorporeal, present or future.

A trust by act *inter vivos* or upon real property must be constituted by a public deed, which must be recorded. A trust may be singular or universal, pure or conditional, for a certain day, for a fixed term, or for the life of the constituent, of the trustee, or of the *cestui que trust*; but a trust providing for a usufruct, income, or pension in favor of an artificial person shall not last more than thirty years.

A trust may be constituted for any purpose not contravening the law or the public morals, and secret trusts are prohibited.

The constituent of a trust may be a natural or an artificial person and may create a trust in any form, for any purpose and upon any terms or conditions, not contravening the law or the public morals, and appoint not only one but two or more trustees and two or more *cestuis que trustent*.

The trustee also may be a natural or an artificial person, and shall have all the rights and actions inherent in full ownership, but not the power to convey or encumber the trust property, unless he has express authority therefor or unless the execution of the trust is impossible without alienating or encumbering the property.

The *cestui que trust* likewise may be a natural or an artificial person.

The act further provides in regard to the intervention of the courts, where necessary; and the termination of the trust; and it expressly directs that real property transferred by trust shall be recorded in the registry in the name of the trustee, as in the case of any other conveyance of ownership, and there shall be recorded as encumbrances on the property the provisions of the trust whereby the authority of the trustee to alienate or encumber the property be limited.

From the beginning the appellants have maintained that the above mentioned act is the law which controls their case. It was our own Legislature which, since 1928, not only opened the field for the

trust companies to lawfully establish themselves and develop their activities in our Island, but likewise for the pure trusts and even the commercial ones.

The legal personality of the trust in this case and the capacity of its trustees to acquire real property and to mortgage the same, appear from the instruments presented in the registry in accordance with the jurisprudence and the laws in force in Puerto Rico, and it can not be concluded that the trust in question constitutes a corporation which must be organized and function in accordance with the Trust Company Law or with the general Corporation Law of this Island.

This being so, the first, second, third, and fourth grounds of refusal in the decision appealed from must fall from their basis.

Let us consider the fifth ground. Admitting, without deciding, that from an examination of the declaration of trust, of the agreement included in the deed of sale, and of the sale itself, it might be concluded within this administrative appeal that "the power behind the throne" is in this case really the East Puerto Rico Sugar Company, a foreign corporation, and that the trust was created merely to enable said corporation to acquire lands in a greater quantity than that permitted by law, we would come face to face with what was doubtless the moving purpose of the entire decision appealed from, to wit: to oppose the violation of the Resolution of Congress which fixes its policy in regard to land holding in Puerto Rico. (Section 3, Joint Resolution, approved May 1, 1900, Revised Statutes and Codes of Puerto Rico of 1902, p. XXXIV.)

May the registrar, no matter how patriotic his intentions, how strong his intellect, how deep his learing or how extraordinary his effort made for the purpose, carry the problem into the sphere of his jurisdiction?

This question does not come now before this tribunal for the first time. It has already been decided in a negative sense in several decisions rendered after a careful study of the law and the facts.

The first of said decisions was *Compania Azucarera de la Carolina* v. *Registrar of Property*, 19 P.R.R. 143. The opinion of the Court delivered by Mr. Justice Wolf was unanimous. There, after an

examination of the statutes involved, including the Mortgage Law, and of the jurisprudence, it was said (p. 150):

"Thus it may be seen that a corporation limited by the law or by its charter has until the State acts every power and capacity that any other individual capable of acquiring lands possesses. The Corporation may exercise every act of ownership over such lands; it may sue in ejectment or unlawful detainer and it may demand specific performance. It has an absolute title against all the world except the State after a proper proceeding is begun in a court of law. The provisions of law in Porto Rico are no different. The Foraker Act does not prohibit the acquisition of land, but says that a corporation engaged in agriculture shall by its charter be restricted to ownership and control of not to exceed 500 acres of land.

. . . . . .

"The Organic Act in section 21 provides that the Attorney General will have all the power and discharge all the duties provided by law for an attorney of the Territories of the United States, in so far as the same are not locally inapplicable.

"And by section 771 of the Revised Statutes of the United States, among other duties it is made the duty of every district attorney to prosecute all civil actions in which the United States are concerned, and by other sections attorneys for the Territories are given the same powers as the United States district attorneys, so that its provisions would seem to determine who is the officer who shall look after the interest of Porto Rico and who shall bring actions to recover any fine or forfeiture.

"Moreover, by section 73 of the Political Code, as it has been amended by the laws of 1906, it is provided that the Attorney General, upon the request of the Commissioner of the Interior, shall institute suits for the discovery of all immovable and movable property to which The People of Porto Rico may be entitled under the laws of escheat, or in and to which it has any other claim.

"So that ample provision is made in the law by which any

violation of the Organic Act may be thoroughly investigated and prosecuted by the Attorney General. If there is any doubt how far the powers of the registrar extend, it is made clear by the provisions of the Organic Act and by section 73 of the Political Code. The Attorney General is the exclusive officer in whom is confided the right to initiate proceedings for escheat or attack the right of a corporation to hold land. Without some such judicial or quasi-judicial proceedings a corporation might be deprived of some of its property rights without due process of law."

Several months afterwards, in the case of *Compania Azucarera* v. *The Registrar*, 19 P.R.R. 724, the court ratified its viewpoint, which it confirmed three years later in the cases of *Isabella Grove* v. *Registrar*, 24 P.R.R. 240; and *P. R. Leaf Tobacco Co.* v. *Registrar*, 24 P.R.R. 245.

Ever since that time, or more than twenty years ago, the Judicial Power has spoken with entire clearness and has shown the way. The Federal and the Insular Executive and Legislative Powers, and the community in general were advised. They are the ones who are called upon to act.

There only remains to be considered the ground of refusal relating to the consolidation and to the curable defect.

The properties involved belonged to the United Porto Rican Sugar Co., which had been placed in liquidation before the Federal Court. We know the agreement in accordance with which the said properties were acquired at public auction by E. T. Fiddler and later transferred to Eastern Sugar Associates. It was provided in that agreement that—

"1. In so far as the Bank may require, and as and when the Bank shall require, the real properties mortgaged shall be consolidated into one or more agricultural entities and recorded as such in the registries of properties, and each and every parcel of the properties mortgaged shall secure the entire obligation or such proportion thereof, as the Bank in its sole discretion shall determine."

The bank insisted. All the interested parties agreed, and in order to facilitate the transaction, the Receiver appointed by the court accordingly made the consolidation and it was stated in the deed of sale itself, at page 878, that such consolidation was made by the Receiver at the request and with the approval of Eastern Sugar Associates. Moreover, it may well be maintained that what was done in that connection was approved by the court.

The registrar contends that the consolidation could not be made, in the first place, because the Receiver had no authority therefor, and also because the consolidated properties are not known by a common name nor form a body of mutually dependent properties nor do they depend upon a common center.

In view of the attendant circumstances, we think that the Receiver could act as he did. In the case of *Palou* v. *Registrar*, 19 P.R.R. 352, 355, this court said:

> "The consolidation into one property of several properties previously recorded does not constitute an alienation thereof or an encumbrance thereon. Neither does it partake of the character of a contract, and although it is an *act* which involves a new record in the registry, it is a record of such nature as to effect only the registry itself and does not create, modify, or extinguish any right whatsoever."

The Receiver acted at the request of the parties and with the approval of the court. The consolidation having been made at the instance and with the express acceptance of the present owner of the properties, it may also be regarded as made by the owner itself.

May such a large number of properties, non-contiguous many of them, situated in various municipalities and corresponding to various registries be consolidated? Even though an extreme case is involved, in our judgment, such a consolidation may be allowed.

Article 61 of the Regulations for the Execution of the Mortgage Law says:

> "The following shall be recorded under a single number if the persons interested should so request, being considered a single estate, in accordance with article 8 of the law and for the purposes therein stated:

"First.—Rural property known as farms, coffee plantations, sugar plantations, pastures, stock farms, etc., which form dependent or joined property, with one or more building and one or more tracts of land, wooded or otherwise, even though they are not contiguous to each other or to the building provided they belong to the same parcel and to one person only, or to a number of persons *pro indiviso*, even though it be subject to charges or property rights, held by one or a number of persons, and composed of different sections or parts given in emphyteusis."

The decisions of the General Directorate of Registries of Spain are to the effect that for a consolidation it is required that there should be unity of ownership, a common name for all the properties; that the latter should constitute a body of mutually dependent properties and in addition that they should be dependent upon a common center.

We have already said enough with regard to the unity of ownership. All the properties belonged to the United Porto Rican Sugar Co. and are now owned by Eastern Sugar Associates.

As regards the common name, the appellants site the deed of sale itself, p. 774, where at the commencement of the description of the consolidated property it is said:

"Rural: A group of dependent properties designated under the name of 'Eastern Sugar Estates'."

To show that the properties form a group of mutually dependent estates subject to a common center, they invoke the clause of the said deed appearing at pages 772 to 774 thereof, which says:

". . . that in view of the fact that all the properties described above in Section First of this deed, composing piezas numbered from (1) to (91), both included, although not contiguous, constitute a single body of interdependent rural properties consisting of a sugar estate of centrals named Central Pasto Viejo, Central Juncos, Central Santa Juana, Central Defensa and Central Cayey and their dependent lands dedicated to the growing and cultivation of sugar cane and the manufacture thereof into sugar and molasses, and the shipment of said products, forming and

operated as a single agricultural and industrial enterprise, and exercising the right conferred by Article Eight of the Mortgage Law and Article Sixty-one of the Regulations of said Law, hereby groups, consolidates and merges all the said properties into one entity or 'agrupacion' and agrees that it shall be recorded in the corresponding Registries of Property as a single estate under a single number as described below, and instructs and directs the corresponding Registrars of Property to record the same as a single estate under a single number so that it may be considered as one single property or estate for all legal purposes and the said properties having been herein so grouped, consolidated and merged constitute the rural estate described in the Spanish Language, as follows:"

In their reply brief (p. 46) to the main brief of the registrar, they add:

"In passing upon an instrument, the registrar must confine himself to the contents thereof. As regards the consolidation he should be confined to what the deed sets forth and what appears from the registry, without taking into consideration his own knowledge of Geography.

"Had there been any means, other than the instrument itself as in this case, of establishing the industrial and administrative unity of Eastern Sugar Associates, it would have been extremely easy for the appellants to do so. We could have shown that all the consolidated properties have been operated as a single estate, since from the registry itself there appear agricultural loan contracts entered into between the United Porto Rican Sugar Co. (of Porto Rico) and the National City Bank, wherein all the consolidated properties were affected. We could have shown also how all the properties are connected by railroads, ships, or motor vehicles, owned by the trust; how cane harvested on land at Vieques may be ground in any of the Centrals 'Cayey', 'Defensa', 'Juncos', 'Pasto Viejo', or 'Santa Juana', and how an ox, the property of the trust, which has worked throughout the grinding season at Cayey may be sent in the summer to pasture

on land at Vieques. Of course, to present those facts public hearing before the registrar would have been necessary. From a reading of all the instruments copied into the deed, the unity required by the Mortgage Law for a consolidation of estates is clearly inferred."

The curable defect does not exist. It does not appear from the deed that it had been the intention of the parties to include in the consolidation the estate on which the "Central Defensa" is located. The said estate is not described among those which form the consolidation. The appellants maintain that if the name of said Central was mentioned in the consolidation, this was done because it was considered "necessary in order to indentify the consolidated estate, since the properties located around the said 'Central Defensa' and which form with the latter a unit within the land of Eastern Sugar Estates, were consolidated," and we find no valid reason for holding the contrary.

By reason of all the foregoing, the decision appealed from must be reversed and the record applied for ordered.

(S) EMILIO DEL TORO,
Chief Justice.

PLAINTIFF'S EXHIBIT 10.

DECISION OF THE PUBLIC SERVICE COMMISSION IN RE APPLICATION FOR A FRANCHISE BY THE "UNITED PORTO RICO SUGAR COMPANY" TO TAKE WATER FROM THE HUMACAO RIVER FOR IRRIGATION PURPOSES.

ANNUAL REPORT OF THE PUBLIC SERVICE COMMISSION OF PUERTO RICO TO THE HONORABLE THE GOVERNOR OF PUERTO RICO AND TO THE HONORABLE THE SENATORS AND REPRESENTATIVES OF THE LEGISLATURE OF PUERTO RICO, FOR THE FISCAL YEAR 1930–1931, pp. 177 to 186.

Public Service Commission of Puerto Rico

In re: Application for a franchise by the "United Porto Rican Sugar Company" (of Puerto Rico) to take water from the Humacao river for irrigation purposes.

Case No. F—319A.

DECISION.

The United Porto Rican Sugar Company (of Puerto Rico), which is alleged to be a corporation organized under the laws of Puerto Rico and doing business in this Island and which is further alleged to be the owner or lessee of several estates located in the district of Humacao and where the petitioner is at present engaged in the planting and cultivation of sugar cane to be ground and turned into sugar in its factories, appeared before this Commission and applied for a grant of no less than 20,000 gallons of water per minute to be taken from the Humacao river during a minimum period of 320 days annually, for the irrigation of the estates cultivated by it.

The proper notices were posted and the usual steps were taken by this Commission for notifying the Government offices in regard to this application. The application was amended by the petitioner on August 5, 1930, so as to comply with section 189 of the Law of Waters, limiting its application to the water exclusively needed for irrigating its own estates but not those held by it under a lease. The original petition included two estates to be irrigated which did not belong to the company.

There was also filed, together with the amended application, a description of the estates and lands included in the irrigation plan, which description is summarized as follows:

	Acres.
Total area of the estates recorded in the registry	3,199.71
Total area to be irrigated according to an assessment .	1,766.00
Total area of land held by it as owner, that is, belonging to the company	3,199.71

Moreover, at the hearing Mr. Charles W. Fowler, testified, as secretary of the United Porto Rican Sugar Company, that this is a corporation engaged in agriculture, that it owns more than 3,000 acres and that the water applied for was to be used in irrigating some 1,700 acres, as appears from the report attached to the application and prepared and filed by the company and its attorney. During the hearing, the possible reaction of this Commission to the fact

that the applicant for this franchise was a corporation engaged in agriculture which acknowledges and admits to be the owner of an area of land in excess of the amount contemplated by law, was incidentally discussed.

Let us see first what the law provides. Section 39 of our Organic Act, approved March 2, 1917, is fully transcribed. The contents of the Foraker Act in this connection are therein transcribed. They read as follows:

> "No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable."

This is the provision contained in our constitutional chart and from my point of view it outlines, in general terms, the policy that the National Congress intended to see established in this Island as regards the ownership of lands by corporations, its apparent purpose being the imposition of limitations and restrictions on such entities in this respect. In the first place, this section of the Organic Act provides that no corporation shall be authorized to conduct the business of buying and selling real estate. In this particular the prohibition is clear and express.

The Organic Act makes it clear that no ownership or holding of such class of property, that is, real estate, shall be permitted in the

case of the various corporations, except where such lands or real estate shall be reasonably necessary to enable them to carry out the purposes for which they were created. To my mind, this sets up a restrictive policy in general terms for corporations which, not being corporations engaged in agriculture nor corporations engaged in the purchase and sale of real property, require land or real estate for the purpose of carrying out the purposes for which they were organized. Concerning this kind of corporations the intention of the law is clear as to setting a limit to the amount of real estate that they may own, taking into account the purposes for which the said corporations were organized. This would necessitate governmental action to regulate the matter, or specifically to determine in each case the limit of the amount of real estate.

So that so far we have clearly in the law an absolute prohibition as to certain kind of corporations to engage in the purchase and sale of real estate; and another relative prohibition necessitating an explanation and regulation thereof, applicable to corporations not included within the scope of the former provision.

Let us see now what it says regarding corporations engaged in agriculture.

> ". . . And every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."

Of course, as to corporations engaged in agriculture, the law fails to contain directly an express prohibition in regard to the number of of acres which such corporations are allowed to own. It, however, specifies that such limitation shall be expressed in the corporate charter; but it, anyhow, limits the legal authority of such corporation.

Such is the subtile apparent distinction in the terms of the law as to corporations engaged in agriculture, and the reason for its existence is to be found also in the intention of Congress to set up a maximum limit to the ownership of land by this kind of corporations, in harmony with the idea previously expressed that corporations shall not own or hold real estate except such as may be rea-

sonably necessary to enable them to carry out the purposes for which they were created. But as the purposes for which the creation of corporations to be engaged in agriculture necessarily require the possession of real estate, precisely in order to carry out their purposes, the foregoing provision of the Organic Chart was not in itself sufficient to settle the case of corporations engaged in agriculture, and it became necessary for Congress to express its purpose still more clearly than in other cases, in so far as the latter corporations were concerned. And thus Congress did so expressly, without any room for doubt, by conferring on the Insular authorities the power to determine the amount of land required in a general way by all other corporations, and fixed a maximum limit of 500 acres.

No doubt that beyond that 500-acre limit, neither the Insular Government nor the Legislature could extend such amount to a number of acres in excess thereof. We speak of what might be done within the law. Congress meant to go farther and reached the individuals themselves constituting corporations engaged in agriculture, and it thus expressly provided that no number of a corporation engaged in agriculture shall be in any wise interested in any other similar corporation. This simply means that through the Organic Chart corporations or subsidiary companies are forbidden to carry out indirectly that which Congress decided to prohibit done openly or directly.

In addition to the above, there is another limitation upon the right of ownership of real estate imposed on corporations, *i. e.*, that where real estate is acquired by them as the result of the collection of loans, they shall only retain such ownership for a specific period of time, the law expressly providing that they shall dispose of it within five years after receiving the title thereto. This latter restriction undoubtedly refers to all corporations making loans secured by real estate, without excepting at all corporations engaged in agriculture. To my mind, this contains an implied denial of the right of full ownership in corporations, since it restricts the time within which they shall be allowed to enjoy such right.

It is alleged by the petitioner that the questions above set forth are excluded from consideration by this Commission, and says that we are

barred from raising the question here propounded, inasmuch as the right of ownership in corporations has been fully recognized, and it alleges that the Attorney General is the only officer with power to bring proceedings to review the ownership or to challenge the right of a corporation to own real estate, and, further, that by such judicial or quasi judicial process a corporation might be deprived of some of its ownership rights without due process of law.

The foregoing reasoning of the petitioner rests on decisions rendered by the Honorable Supreme Court of Puerto Rico and especially on that in *Compania Azucarera de la Carolina* v. *Registrar*, 19 P. R. R. 143. It is true that our Supreme Court made therein the above statements. We would, however, remind the petitioner that the only question determined in the above case was that the registrar of property was without authority to question the right of the corporation to have its title recorded in the registry, even though it appeared from the face of the instrument that it owned more than 500 acres. The main ground relied on by the Hon. Supreme Court for rendering the above decision was that these questions should be determined in a clear proceeding before a court in accordance with law, as stated in the judgment, in which both the government and the corporation may be given an opportunity to be heard.

The issue before this Commission is not whether or not the corporation is entitled to the ownership of a larger amount of property than is specified in the law, nor of any right that it might have to continue in the possession of such land in open violation of the express provisions of the Organic Chart of Puerto Rico. Let it be remembered that the issue raised is whether this Commission is bound to grant the use of public waters for the private purposes of a corporation, *i. e.*, the irrigation of a certain amount of land exceeding 500 acres; what is more, it almost reaches 2,000 acres. This is the issue.

Under the Public Service Act this Commission is empowered to make grants of public waters for private purposes and these grants are in the nature of a franchise, to be signed by the Governor after being approved by the Commission. The issue as far as we are concerned is as follows: Can this Commission rightly grant a franchise

and recommend its approval where it would tend to aid and promote a violation of the provisions of the Organic Act? It this Commission, before the public and before the Government, in the same position as a registrar of property, or is this Commission clothed with such powers concerning these grants that it may inquire into this question? These are the issues to be determined by us.

In *Compania Azucarera* v. *Registrar, supra,* the Supreme Court stated that the functions of the registrar were entirely restricted to the authority expressly granted by law to him. If there was presented an instrument meeting the legal requisites and the registrar refused to record the same, the courts have the power to compel him to make the record sought.

The Public Service Commission is clothed with discretional powers in the granting of franchises which must be granted or refused by the Public Service Commission in conformity with the public needs and interest. In the present case, however, the issue involved is the reverse, that is, the use of a public property, as is water, for quite private purposes, such as the irrigation of a certain estate belonging to a private entity.

It is unquestionable that in every application for a grant filed with this Commission the latter must first consider the public interest at large and then the private interest of any private entity, and it is the Commission's duty to see to it that such public interest is protected as against any other interest.

Generally speaking, the Public Service Commission, before granting a franchise or making a grant, considers at the start the personal and individual circumstances of the applicant. If the application is for a water grant, we inquire into the personal circumstances of the applicant, into his responsibility toward the public in his compliance with the law and his observance of the established regulations, in order to guarantee the orderly working of the public business. If the granting of an important franchise is involved, the same precautions are always taken, inasmuch as this will furnish us an inkling as to his future compliance with the regulations established by this Commission for the public interest.

We hold that as regards the granting of franchises, we represent

the State authority, and that it is before such authority that a corporation has made the admission that it is a corporation engaged in agriculture that presents itself as the owner of some 3,000 acres of land, and that its application is for the use of public waters for the irrigation of some 1,700 of the above 3,000 acres.

If a decision from a court had been presented to us finally explaining that this was a corporation engaged in agriculture and that it owned more than 500 acres of land, such decision could not carry more weight with us than the admission of the petitioner itself in this respect, and, therefore, we hold this particular to have been fully shown.

The point to be determined now is this: This fact being admitted, shall we or shall we not grant the franchise in question? We are of the opinion that it being admitted as a fact that the petitioner is a corporation engaged in agriculture and that moreover it owns more than 500 acres and it appears before us with an application for water to irrigate land above that amount, this constitutes an act *ultra vires* of said corporation.

We may further state, speaking generally, that the policy laid down by the Congress through the Organic Act is the establishing of limitations to the right of ownership in corporations concerning real estate, and that the fact that this policy has not been enforced so far is no bar to this Commission enforcing it now, in the belief that in doing so it complies with the ends, the purposes and the intention expressed in our Organic Act. This provision that appears in our Organic Chart has a lofty aim.

A country like ours, one of the most thickly populated of the world and which may also be said almost to be devoid of industries since we are scarcely taking the first steps in developing the same, mainly depends for its life and prosperity on agriculture. If the land that is needed for agriculture is almost exclusively centralized in the hands of certain corporations, we can foresee very disturbing and obscure future prospects for most of our people. We do not mean to say that corporations engaged in agriculture, if in control of large tracts of land, do not develop agriculture. We simply mean to say that then our people, instead of deriving the advantages accruing to them from

their ownership of the land, would or will find themselves reduced to the condition of peonage in working the plantations.

This is the evil which Congress foresaw and wanted to forestall, and it was for its prevention that it put into the Organic Act the provisions which we have been discussing, which lay down the policy and which establish the rules clearly and beyond all doubts, a policy which as already stated by us is of a restrictive character and which this Commission is bound to respect and enforce. If Congress had meant that nothing be done in regard to the ownership of land by corporations, there was no need for it to discuss the matter and regulate the same specifically as was done. So that what appears in the Organic Act has some meaning and some purpose binding on this Commission in the performance of its official duties.

If we want to ascertain whether this question is of sufficient public interest as to be taken into account by us, we would only point out to the latest reports received by us in regard to the condition of the people in the Vieques island. The land in that island is almost in its entirety controlled by a single entity. The consequences for the remaining population so far, to judge from the reports received, are not at all encouraging, and, what is more, the conditions prevailing there are of such character as to require for their mitigation the intervention of several officers of the Government. This which we have actually seen in little Vieques, may happen again, although not so acutely, in the Island of Puerto Rico also. If we make a study of coast lands we will discover that the best zones for the growing of fruits and for agricultural purposes are in the hands of certain corporations to the almost total exclusion of small landowners who have been forced to emigrate to the highlands in the interior of the Island. But in our coastal zone it may be said that our population does not include small landowners save in a small and very reduced percentage.

The policy of the Congress of the United States as regards the foregoing has been clear, precise and without any room for doubt as to the firmness of its purpose. For the first time the Congress publicly stated its will concerning the holding of land in Puerto Rico by means of its Joint Resolution of May 1, 1900. Section 3 of said Joint Resolution gave expression to such policy, using exactly the same words

which were afterwards literally copied into the Organic Act for Puerto Rico in the year 1917. So that Congress laid down its policy in 1900 and again reaffirmed it with still greater emphasis in 1917 (notwithstanding the decision in *Compania Azucarera de la Carolina* v. *Registrar, supra*), and then, on reaffirming it, requested the Governor of Puerto Rico to make and submit to Congress at the session beginning the first Monday in December, 1917, a report of the real estate used for the purpose of agriculture and for private purposes and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of 500 acres.

Congress has been consistent in its purpose to insist on a restrictive policy in regard to the ownership of land by corporations in Puerto Rico.

Therefore, we hold that the statements contained in the Organic Act are not, we might say, ineffective as to the ownership of real estate by corporations. Moreover, speaking generally, it lays down a restrictive policy when it provides for its practical application by means of the proper legal proceedings in which corporate entities are granted the right to be heard before a final decision of such question.

But this is merely a procedural and adjective matter and here, as elsewhere, the substantive side is the important thing; and as regards the substantive side we consider ourselves as viewing the matter in a sound, correct and true way if we state that the aim of such provisions of the Organic Act was to prevent the centralization of the ownership of land in the hands of corporations.

In view of the public policy here outlined and with the knowledge that a corporation is violating the terms of its own chart and the very policy laid down by Congress, can then this Commission decide that it must grant it the use of a public property such as the waters of the People of Puerto Rico so that it may continue more easily and advantageously the violation of its own chart and the general policy itself of Congress? We hold that the public interest conflicts with this grant and we further hold that the petitioner itself by appearing here and admitting such violation of the law and of its own chart shows that it does not come with clean hands and is not in a position to deserve the granting of the franchise applied for. If this Commission

were to authorize the grant of the use of public waters for irrigating the number of acres of land, as requested by the petitioner, it would tacitly and implicitly acknowledge the right of the corporation, in an official manner, to hold land in larger amounts than is provided for in the Organic Act, and would indirectly share in the violation of the law by said corporation.

The foregoing statements as to the right of this Commission to inquire into the individual circumstances of each applicant for the granting of a franchise or of a privilege for any purpose bear on a primary or important question. The conduct observed by a certain entity or individual regarding the respect due by him to the laws and the rules of conduct laid down by the Government is not to be overlooked.

It should be known that in the latter part of October last, Hon. Lauro Pinero Rivera, Mayor of Ceiba, sent to this Commission the following Communication:

"Ceiba, P. R., October 31, 1930.

To the Members of the Public Service Commission, San Juan, P. R.—

Gentlemen: Many residents in the ward of Guayacon of this municipality have called at this office to inform me that the United Porto Rican Sugar Company has built a dam in the Dagudo creek in the 'Oriente' Plantation in order to use the whole stream of water for the irrigation of its cane fields. As the water course, from the dam down to the sea, has become dry, the residents of this section that formerly used the water supplied by such stream are greatly suffering by the scarcity of said liquid, because most of the people of the aforesaid ward reside a long distance away from the place where the above corporation has built its dam. I am informed that the United Porto Rico Sugar Company has not been granted any franchise whatever for the use of the water of the said creek and for this reason and in behalf of this municipality and of the residents of the aforesaid ward I submit the matter to your consideration so that the proper measures be adopted in order that the residents of the Guayacon ward should not be unlawfully deprived of the use of such waters for domestic purposes. In the hope that, in view of the

seriousness of the case, your Hon. Commission will order an inquiry into the matter as soon as possible, I remain, gentlemen, very truly yours,

(signed) LAURO PEDRO RIVERA, Mayor."

The above communication was referred to the Commissioner of Interior who, in pursuance of this complaint and after having ascertained the above facts, ordered the demolition of the aforesaid dam built by the petitioner herein also in violation of the law for the purpose of taking public waters, without caring at all whether the requisites provided by law had been complied with before the said waters could be used by any entity whatever.

For the foregoing reasons we hold that The People of Puerto Rico should not grant the use of the public waters of a river to the petitioner which appears to have placed itself outside the law, in open violation of our Organic Act.

The application in the present case is, therefore, denied.

San Juan, P. R., November 24th, 1930.

(Signed) MIGUEL A. MUNOZ, President.
FILIPO L. DE HOSTOS,
Associate Commissioner.
BOLIVAR PAGAN,
Associate Commissioner.

EXHIBIT NUMBER 11.

No. 33

An Act to confer upon the Supreme Court of Puerto Rico exclusive original jurisdiction in Quo Warranto proceedings that the Government of Puerto Rico may institute for violations of the provisions of Section 752, Title 48, United States Code, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all Quo Warranto proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752,

Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of Quo Warranto.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. This Act, being of an urgent character, shall take effect immediately after its approval.

Approved July 22, 1935.

EXHIBIT NUMBER 12.

(No. 47)

An Act to amend sections 2 and 6 of "An Act establishing Quo Warranto proceedings, approved March 1, 1902", as amended by Act No. 37, approved April 24, 1931, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1. Section 2 of An Act entitled "An Act establishing Quo Warranto proceedings", approved March 1, 1902, is hereby amended as follows:

"Section 2. In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for an information in the nature of Quo Warranto in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights

performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico, a petition for an information in the nature of Quo Warranto in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise."

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 2. Section 6 of An Act entitled "An Act establishing Quo Warranto proceedings," approved March 1, 1902, is hereby amended as follows:

"Section 6. In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; *Provided*, that whenever sentence is pronounced declaring

that the defendant has usurped or is unlawfully exercising the functions of any public office, said defendant must cease immediately in said office, and abandon the same; and if he fails to do so, the court, on petition of the Attorney General or of any person interested in the office, shall issue an order to the marshal compelling him to oust the defendant from office.

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

"The violation of an order prohibiting the doing of business after final judgment is rendered shall be punished by a maximum fine of five hundred (500) dollars for each day such entity may continue in operation, enforceable on the property of the entity, and the persons representing it shall be guilty of contempt of court, punishable by imprisonment for a minimum term of from one to six months in jail.

"Whenever judgment is rendered in favor of any defendant, such defendant may recover costs from the plaintiff, including a reasonable attorney's fee.

"For the purpose of fixing the value of the property, The People of Puerto Rico, through its agents or representatives, is

authorized to enter the properties the object of the controversy, whatever their nature or condition may be."

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. This Act, being of an urgent character, shall take effect immediately after its approval.

Approved, August 7, 1935.

EXHIBIT NUMBER 13.

(No. 45)

An Act providing for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, operation, and maintenance of revenue-producing undertakings by any municipality, or the government of the capital, and the pledging, encumbering, and otherwise alienating of the revenues thereof; authorizing and regulating the issuance of revenue bonds to the United States of America or to any agency or instrumentality thereof for financing such undertakings; providing for the payment of said bonds and fixing the rights of the holders thereof; prescribing the duties of officials of the insular government in connection therewith, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—*Short Title of Act.*—This Act may be cited as "The Revenue Bond Act of 1935".

Section 2.—*Definitions.*—Whenever used in this Act, unless a different meaning clearly appears from the context—

(a) The term "undertaking" shall mean any one or a combination of two or more of the following: water, sewerage, gas, electric, heat, light or power works, plants or systems, together with all parts thereof and appurtenances thereto including, but no limited to, supply and distribution systems, reservoirs, dams sewage treatment and disposal works and generating plants.

(b) The term "municipality" shall include the Government of the Capital and all municipalities subject to the provisions of the Municipal Law, as amended.

(c) The term "governing body" shall include The Board of Commissioners of San Juan and the municipal assemblies of other municipalities.

(d) The term "bonds" shall mean bonds issued and sold to the United States of America or to any agency or instrumentality thereof payable solely from the revenues of any undertakings (after deduction therefrom of the reasonable operating and maintenance expenses thereof) acquired, purchased, constructed, reconstructed, improved, bettered or extended in whole or in part from the proceeds of the sale of such bonds, as herein provided.

Section 3.—*Declaration of Policy.*—It is hereby declared to be the policy of the People of Puerto Rico that any municipality acquiring, purchasing, constructing, reconstructing, improving, bettering or extending an undertaking pursuant to this Act, shall manage such undertaking in the most efficient manner consistent with sound economy and public advantage to the end that the services of the undertaking shall be furnished to consumers at the lowest possible cost. No municipality shall manage or operate such undertaking in a manner considered by the Auditor of Puerto Rico to be not the most efficient manner consistent with sound economy and public advantage, or in a manner considered by the Auditor to be for gain or profit or as a source of revenue to the municipality, but shall operate such undertaking for the use and benefit of the consumers served by such undertaking and for the promotion of the welfare and for the improvement of the health and safety of the inhabitants of the municipality; Provided, that nothing herein shall be construed as authorizing the prescribing or collecting of less rates, fees or charges than may be authorized by any ordinance adopted and approved as herein provided.

Section 4.—*Additional Powers of Municipalities.*—In addition to the powers which it may now have, any municipality shall have power under this Act: (a) to construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain (sub-

ject to the procedural provisions of the law for the condemnation of private property in force), lands or rights in land or water rights in connection therewith, (b) to operate and maintain any undertaking for its own use or for the use and benefit of its inhabitants and also to operate and maintain such undertaking for the use and benefit of persons, firms, associations, and corporations (including municipal corporations and municipalities and inhabitants thereof) whose residences or places of business or boundaries are (or which are) located outside the territorial boundaries of such municipality but within Puerto Rico and within a radius of ten miles from the territorial boundaries of such municipality, (c) to issue its bonds to the United States of America or any agency or instrumentality thereof to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking, (d) to prescribe and collect rates, fees, charges for the services, facilities and commodities furnished by such undertaking, and (e) to pledge to the punctual payment of said bonds and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of such undertaking, after deduction therefrom of the reasonable operating and maintenance expenses thereof, sufficient to pay said bonds and interest as the same shall become due and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenue. The governing body of the municipality in determining such cost may include all costs and estimated cost of the issuance of said bonds, all engineering and inspection expenses, and interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this Act.

Such rates, fees or charges for the services and facilities of a sewerage undertaking are hereby declared to be liens upon the real estate (except governmental or municipal real estate) upon or for which such sewerage service or facilities is supplied; *Provided, however,* that such liens shall not attach to such real estate until such charges have become delinquent as provided by ordinance or such municipality

fixing the delinquency date. Sworn statements showing such delinquencies may be filed in the registry of property in the district in which such real estate is located, which shall be deemed notice of the lien for payment of such rates, fees or charges. Such municipality shall have the power to foreclose such lien in like manner and with like effect as in the foreclosure of mortgages on real estate, in addition to the usual methods for collecting such rates, fees or charges.

Section 5.—*Authorization of Bonds or Pledge of Revenues.*—Bonds may be authorized to be issued under this Act, and revenues of an undertaking may be pledged, charged or otherwise encumbered after deduction therefrom of the reasonable operating and maintenance expenses thereof, by ordinance of the governing body, and, provided that a majority of all members of the governing body, then in office vote in favor of such ordinance, it may be adopted at the same meeting at which it is introduced and considered. Such ordinance shall become effective upon compliance with the corresponding provisions of law for the taking effect of ordinary ordinances, and after approval by the Executive Council of Puerto Rico, and a certified copy of such ordinance shall be submitted to the Executive Council for such action with respect thereto as it may deem most convenient to public interest.

Before the adoption of any ordinance or ordinances authorizing the issuance of bonds under this Act or the pledging, charging or otherwise encumbering of revenues of an undertaking, the governing body shall serve public notice of its intention to consider the same. Such public notice shall be served by posting in not less than three conspicuous places of the municipality at least ten days before the date of the consideration of such ordinance or ordinances, and by publication in one of the daily newspapers having the largest circulation in the municipality once each week within *Provided*, that all such ordinances shall be approved by the Executive Council of Puerto Rico.

All such bonds shall be signed by the City Manager and by the Treasurer of the Government of the Capital, or by the Mayor and the Municipal Secretary or the Secretary-Auditor, as the case may be, of other municipalities. The coupons shall bear the engraved facsimile signature of said officials. The date of each shall be recorded

by the Secretary of the Capital, or the Municipal Secretary or the Secretary-Auditor, as the case may be.

Registered bonds or coupon bonds registered as to principal shall be recorded and transferable in the registry office of the Treasury Department of the United States, Washington, D. C., if so authorized by the Treasury Department, or in the office of the Treasurer of Puerto Rico, at the option of the owner.

Section 7.—*Sale and Negotiability.*—Such bonds shall be sold at not less than par to the United States of America or any agency each of the two weeks next preceding the date on which such ordinance or ordinances shall be considered. Such public notice shall state the day and hour when the governing body will meet in the City Hall to consider such ordinance or ordinances. Any resident of the municipality or anyone interested may address the governing body, in writing, in opposition to said ordinance or ordinances, and the governing body shall consider the reasons offered and shall decide as it may deem most convenient to public interest.

Section 6.—*Form and Contents of Bonds.*—Said bonds shall bear interest at such rate or rates not exceeding five per centum per annum, payable semi-annually, may be in such series, one or more, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may be payable at such place or places, may carry such registration privileges as to principal, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such ordinance or subsequent ordinances may provide; or instrumentality thereof. Pending the preparation of the definitive bonds, interim receipts or certificates in such forms and with such provisions as the governing body may determine may be issued to the purchaser of such bonds. Such bonds and interim receipts or certificates shall be fully negotiable within the meaning and for all the purposes of the Uniform Negotiable Instruments Act as in force in Puerto Rico (Title XI of the Code of Commerce of 1932).

Section 8.—*Provisions in Ordinance Authorizing Issuance of Bonds.*—Any ordinance or ordinances authorizing the issuance of bonds

under this Act may contain provisions as to (a) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof, (b) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves, but providing first for the reasonable operating and maintenance expenses thereof, (c) the transfer from the regular funds of the municipality to the account or accounts of the undertaking an amount equal to the cost of furnishing such municipality or any of its departments, boards or agencies with the services, facilities and commodities of said undertaking, (d) prohibiting or limiting the issuance of other or additional bonds payable from the revenue of said undertaking, (e) the operation and maintenance of such undertaking, (f) the insurance to be carried thereon and the use and disposition of insurance moneys, (g) books of account and the inspection and audit thereof, and (h) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver or judicial administrator by the insular district court to whose jurisdiction the said municipality may belong, which court shall have jurisdiction in such proceedings, and which receiver or judicial administrator may enter and take possession of said undertaking, operate and maintain the same, prescribe rates, fees, or charges, and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do: *Provided*, that the purchaser of the bonds shall not be bound to see to the application of the purchase money or of the revenues of the undertaking, or the performance of any of the covenants of the issuer.

Such ordinance or ordinances may also provide that any undertaking, the cost of which, in whole or in part, is to be paid from the proceeds of the sale of such bonds, shall be constructed in accordance with plans and specifications approved by the Commissioner of the Interior and by the municipality. In this case every contract for the construction of such undertaking shall be entered into by the City Manager or the Mayor, in behalf of the municipality, with the approval of the Commissioner of the Interior and in compliance with the laws governing the construction of municipal public works of

municipal improvements, and rules and regulations made pursuant thereto, subject to the provision of any Federal law applicable under the circumstances, and rules and regulations made pursuant thereto; *Provided*, that in any case such construction shall be subject to such ordinances of the Public Service Commission as may be in force in matters under its jurisdiction.

Such ordinance or ordinances of the governing body may also provide that the Commissioner of the Interior shall have the supervision of the maintenance and operation of the undertaking, and the collection and disbursement of the rates, fees or charges for the services, facilities and commodities afforded thereby. In this case the Auditor of Puerto Rico, upon consultation with the Commissioner of the Interior, shall establish such system of accounting as may be required adequately to control and keep a statistical record of all receipts and expenditures incurred in connection with the maintenance and operation of the undertaking. In this case, if at any time the Commissioner of the Interior or the Insular Auditor shall find that the undertaking is not being maintained or operated, or the rates or charges for the services, facilities and commodities afforded thereby are not being collected and disbursed in accordance with this law and any applicable ordinance of the governing body in force, he shall notify the City Manager or the Mayor, and take such action in connection therewith as he may deem necessary, until the municipality has complied with such law or ordinances. All expenses occasioned to the commissioner of the Interior or the insular Auditor in connection with such action shall be defrayed by the municipality from regular funds.

Such ordinance or ordinances may also provide that the revenues or the undertaking shall be paid into a special or trust fund account or accounts, seperate from all other accounts of the municipality, may also provide terms and conditions upon which so much of said revenues as may be pledged, charged or otherwise encumbered for the payment of bonds issued under this Act and the interest thereon shall be transmitted to the Treasurer of Puerto Rico. Such revenues so transmitted shall be held by the Treasurer of Puerto Rico for the purpose of paying such bonds and interest, and such bonds and

interest shall be paid when due by the Treasurer of Puerto Rico from such revenues so transmitted to him, so far as such revenues will extend.

The provisions of this Act and any such ordinance or ordinances shall be a contract with the holder or holders of said bonds, and the duties of the municipality and of its governing body and officers under this Act and any such resolution or resolutions shall be enforceable by any bondholder, by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

Section 9.—*Validity of Bonds.*—Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued.

Section 10.—*Lien of Bonds.*—All bonds of the same issue (although delivered in installments) shall subject to the prior and superior rights of outstanding bonds, claims or obligations, have a prior and paramount lien on the revenue of the undertaking (after deducting the reasonable operating and maintenance expenses thereof), for which said bonds have been issued, over and ahead of all bonds of any issue payable from said revenue which may be subsequently issued and over and ahead of any claims or obligations of any nature against said revenue subsequently arising or subsequently incurred. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, of sale, of execution, or of delivery, by a lien on said revenue in accordance with the provisions of this Act and the ordinance or ordinances authorizing said bonds.

Section 11.—*Bonds Not a General Obligation of Municipality.*—No holder or holders of any bonds issued under this Act shall ever have the right to compel any exercise of taxing power of the munic-

ipality to pay said bonds or the interest thereon. Each bond issued under this Act shall contain suitable recitals in substance that said bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, and that said bond does not constitute a public indebtedness of the municipality within the meaning of any limitations of indebtedness imposed by the Legislature of Puerto Rico or by the Congress of the United States.

Section 12.—*Undertakings to be Self Supporting.*—The governing body of a municipality issuing bonds pursuant to this Act shall prescribe and collect reasonable rates, fees, or charges for the services, facilities and commodities of such undertaking, and shall revise such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such undertaking, and other reserves provided for.

Section 13.—*Use of Revenue of Undertaking.*—Any municipality acquiring, purchasing, constructing, reconstructing, improving, bettering or extending any undertaking shall have the right to appropriate, apply or expend the revenue of such undertaking for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall be pledged, charged or otherwise encumbered, including reserves therefor, (b) to provide for all expenses of operation and maintenance of such undertaking, (c) to pay and discharge notes, bonds or other obligations and interest thereon, not issued under this Act for the payment of which the revenue of such undertaking is or shall be pledged, charged or encumbered, as herein provided, (d) to pay and discharge notes, bonds or other obligations and interest thereon, which do not constitute a lien, charge or encumbrance on the revenue of such undertaking, which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of such undertaking, and (e) to provide

reserves for operation and maintenance, and for repairs and for betterments to such undertaking; *Provided*, that no revenues shall be used for other purposes, until provision has been made for the reasonable operating and maintenance expenses thereof for the following month. Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general funds.

Section 14.—*Bond of Municipal Treasurer.*—The Treasurer of a municipality issuing bonds under this Act shall furnish to the municipality, before receiving any money from the sale of such bonds, an additional bond which shall not be less than ten per cent of the money to be received. The bond shall conform to the requirements specified in Section 35 of the Municipal Law.

Section 15.—*Undertaking and Bonds Exempt from Taxation.*—So long as a municipality shall own any undertaking the property and revenue of such undertaking shall be exempt from taxation by the Government of Puerto Rico or of any political or municipal subdivision thereof. Bonds issued pursuant to this Act shall be exempt from taxation by the Government of Puerto Rico or of any political or municipal subdivision thereof.

Section 16.—*Consent of Another Municipality.*—No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality.

Section 17.—*Consent of Insular Agencies.*—It shall not be necessary for any municipality proceeding under this Act to obtain any certificate of convenience or neccessity, franchise, license, permit or other authorization from any bureau, board, commission or other like instrumentality of the Insular Government except the Executive Council in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain and operate an undertaking, but the powers and duties of the Commissioner of Health shall continue as heretofore; *Provided, however*, that before submitting any ordinance for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an undertaking to the Execu-

tive Council for approval, the municipality shall obtain a certificate of approval from the Public Service Commission.

Section 18.—*Construction of Act.*—The powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other general, special or local law, and without regard to the requirements, restrictions, limitations or other provisions contained in any such law, including any limitation of indebtedness or on the power to issue bonds.

Section 19.—*Separability Clause.*—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Section 20.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 21.—*Time of Taking Effect.*—It is hereby declared that an emergency exists for the immediate taking effect of this Act, and this Act is of imperative immediate necessity for the well-being of the people of Puerto Rico, and therefore it shall take effect upon its approval.

Approved, August 7, 1935.

EXHIBIT NUMBER 14.

(No. 44)

An Act to add a section to be called section 3 (a), to the "Act to provide for the condemnation of private property for the purposes and under the conditions therein named," approved March 12, 1903, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1. A new section is hereby inserted in, and added to, the "Act to provide for the condemnation of private property for the purposes and under the conditions therein named", approved March 12, 1903, and for other purposes, after Section 3 and before Section 4 of the said Act, which section is drafted as follows.

"Section 3 (a). In addition to the purposes specified in the foregoing section 3, private property may be taken or destroyed

to carry out and develop any general plan of economic reconstruction for the general benefit of the insular community, implanted by The People of Puerto Rico or by the Government of the United States, but through the Government of Puerto Rico, provided said plan is previously approved by the Economy Commission of the Legislature of Puerto Rico, and especially for the redistribution or division of lands concentrated in large estates or for the establishment of public centrals or factories for the manufacture of sugar or for any industry or activity. For the said purposes, condemnation proceedings may be instituted against lands or their accessories, such as buildings, machinery, factories, electric power plants, wharves, bulkheads, dikes, quays, or any other structure either similar or for like purposes.

"For the purposes of this section, all works and projects to be carried out under any general plan of economic reconstruction for Puerto Rico, and especially for the purposes enumerated in the foregoing paragraph, are declared of public utility, and likewise, all such real properties and their accessories as above enumerated, as may be necessary to carry out the purposes stated, are hereby also declared of public utility and may be condemned without the previous declaration of public utility prescribed in Section 2 hereof.

"The People of Puerto Rico or the Government of the United States, through The People of Puerto Rico or any board or commission created by the Legislature of Puerto Rico, through their official agents or employees, shall be entitled, after notice is given to the owner or to his representative, to enter any land, building, plant, or factory for the purpose of examining and studying the conditions of said properties and their adaptability and convenience for the above-mentioned purposes.

"Condemnation proceedings may be instituted by The People of Puerto Rico or by the Government of the United States, through The People of Puerto Rico or any board or commission created by the Legislature of Puerto Rico, to carry out the above mentioned purposes."

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. It is hereby declared that an emergency exists which requires the immediate effectiveness of this Act, and therefore it shall take effect immediately after its approval.

Approved, August 6, 1935.

PLAINTIFF'S EXHIBIT 15.

Senate of Puerto Rico, San Juan, P. R.

CONCURRENT RESOLUTION APPROVED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO, HOUSE OF REPRESENTATIVES AND SENATE, DURING THE SESSION OF FEBRUARY 13, 1935.

I, Enrique Gonzalez Mena, Secretary of the Senate of Puerto Rico, Do Hereby Certify:

First: That at the session of the Senate held on February 13, 1935 (third day of the Thirteenth Ordinary Session of the Thirteenth Legislative Assembly of Puerto Rico) Messrs. Reyes Delgado, Bolivar Pagan, Echevarria, Fiz, Villanueva, Ochart and Pacheco presented Concurrent Resolution No. 3; that it was considered at first reading and referred to the Judicial Committee, and that the same reads literally as follows:

"CONCURRENT RESOLUTION

To petition the Congress of the United States of North America to enact legislation amending the Organic Act of Puerto Rico in the sense of making extensive the prohibition contained in Section 3 of the Joint Resolution approved by said Congress on May 1, 1900, and ratified in Section 39 of the Organic Act of Puerto Rico approved March 2, 1917, relative to the holding of land in excess of five hundred (500) acres, not only in regard to the entities called *corporations*, but also in regard to every person or entity, whether natural or artificial, which, in the same manner as the corporations, acquires or holds land in Puerto Rico; to petition the Honorable Santiago Iglesias, Resident Commissioner for Puerto Rico in the United States, to work for the passage of such measure as well as of any other measure making more effective the application of the

provisions contained in our Organic Act in regard to such prohibition, and for other purposes.

WHEREAS, Section 3 of the Joint Resolution approved by the Congress of the United States on May 1, 1900, provides that in Puerto co—

"'No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applica le.'

"WHEREAS, the Organic Act of Puerto Rico approved March 2, 1917, in the second paragraph of its Section 39, provides that—

"'That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the Joint Resolution approved May first, nineteen hundred, with respect to the buying, selling or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres;'

"WHEREAS, while it is true that up to the present time all

attempts made by some representatives of the Puerto Rican people and designed to secure the effectiveness of the legal provisions hereinabove transcribed have failed, it is also true that during the last five years the current of public opinion has become stronger and more decided in favor of the execution of the mandate of the Congress of the United States in regard to the holding of land in excess of five hundred acres which Congress fixed as a maximum to be held by corporations;

"WHEREAS, corporations, their like, and their associates in interest, for the purpose of evading the spirit and the letter of the Organic Act, have disposed in part of the excess over five hundred acres by transferring the land to, or acquiring it for individuals, associations, or entities especially created for the purpose of violating said prohibition, and in this manner many rural properties greatly exceeding the constitutional limit have been monopolized by putting the title thereto in the name of natural or artificial persons technically outside of the term *corporation* used specifically in the legal provisions hereinabove transcribed;

"WHEREAS, these violations are supported by decisions rendered by the Supreme Courts of the different states and territories of the American Union, and of the Supreme Court of the United States, which have definitely established that a corporation is an artificial being, invisible, intangible, and immortal, existing only in contemplation of law, entirely independent of its incorporators, directors, or stockholders, and which excludes the terms "society", "association", "partnership", or "individual";

"WHEREAS, the great agricultural estates which, in violation of the clear desire of the Congress of the United States and contrary to the interest and welfare of the Puerto Rican people, are undesirable when they are the result of the monopolization of land by corporations, as well as when it is done by any person or entity, either natural or artificial, and the situation will not change simply because corporations are obliged to dispose of the land they hold in excess of the constitutional limit, if said prohi-

bition is not made extensive to all persons and entities, whether natural or artificial engaged in the purchase and sale of real property in Puerto Rico;

"WHEREAS, it is, besides, evident that the holding of land in Puerto Rico should be limited in every sense;

"Now, Therefore, Be It Resolved by the Senate of Puerto Rico, the House of Representatives Concurring:

"Section 1. To petition the Congress of the United States of North America, as it is hereby petitioned, that Section 3 of the Joint Resolution approved by Congress on May 1, 1900, and paragraph 2 of Section 39 of the Organic Act of Puerto Rico approved March 2, 1917, be amended so that the word *corporation* used in the wording of both statutes be substituted by the words "*corporation, person,* or *entity,* either natural or artificial, whether individual, company, partnership, association, or corporation, or under any other name", or that the word *corporation* used therein be defined so as to include all the terms given immediately above.

"Section 2. To request the Honorable Santiago Iglesias, Resident Commissioner for Puerto Rico in the United States, as he is hereby requested, to work for the approval of the measure stated in Section 1 of this Resolution, and also to work for any other legislation which, in his judgment, may be necessary to make effective the application of the provisions contained in our Organic Act, relative to the prohibition in regard to the holding of land in excess of five hundred acres, both as regards corporations and also persons or entities, whether natural or artificial.

"Section 3. A copy of this Resolution, duly certified, shall be sent to the Resident Commissioner for Puerto Rico in the United States, to the presiding officer of the Senate and of the House of Representatives of the United States, to the chairmen of the Committees on Insular Affairs of said co-legislative bodies, to the Secretary of the Interior of the United States, and to the Honorable Franklin D. Roosevelt, the President of the Nation."

Second. That, as appears from the minutes of the session held by

the Senate of Puerto Rico on the 13th of April, 1935 (62nd day of the Third Regular Session of the Fourteenth Legislature of Puerto Rico), the Judicial Committee of this Upper House reported the said Senate Joint Resolution No. 13, and introduced, as a substitute, the following:

"CONCURRENT RESOLUTION

"To petition the Congress of the United States of America to define the term 'corporation', as contained in paragraph 2 of section 39 of the Organic Act of Puerto Rico, approved March 2, 1917, so as to include therein any corporation, or any entity subsidiary or affiliated either directly or indirectly thereto, or any natural or juridical person who either directly or indirectly owns or acquires land for the benefit of a corporation; and to amend the Organic Act of Puerto Rico so as to authorize the Legislature of Puerto Rico to levy a progressive land tax on estates in excess of five hundred (500) acres owned or worked by any such corporation, entity subsidiary or affiliated either directly or indirectly thereto, or any such natural or juridical person who either directly or indirectly owns or acquires land for the benefit of a corporation, and to lay an additional tax on real property owned or worked for the benefit of persons who do not reside in Puerto Rico.

"WHEREAS Section 3 of the Joint Resolution, approved by the Congress of the United States on May 1st, 1900, provides that in Puerto Rico—

"No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate

security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.'

WHEREAS it is provided in the second paragraph of Section 39 of the Organic Act of Puerto Rico, approved March 2, 1917, that:

'Nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.'

"WHEREAS in Puerto Rico there are persons and there have been organized and exist entities subsidiary or affiliated to corporations, which have acquired land that actually belongs to such corporations;

"WHEREAS the provisions of the Joint Resolution of the Congress of the United States of America of May 1st, 1900, refer exclusively to corporations;

"WHEREAS the easiest way of correcting this state of affairs is by bringing such corporations and entities or persons thus related or affiliated to such corporations within the purview of the provisions of the aforesaid Joint Resolution of May 1st, 1900;

"WHEREAS it is moreover necessary to authorize the Legislature of Puerto Rico to levy a progressive land tax on estates exceeding 500 acres, as a way of compelling corporations holding lands in excess of the said 500 acres to dispose thereof;

"WHEREAS there are many absentees deriving profits from such estates located in Puerto Rico without contributing either

with their work or with their mind to the prosperity of Puerto Rico, and it becomes necessary to levy an additional tax upon their estates in Puerto Rico,

Therefore, Be it resolved by the Senate of Puerto Rico, the House of Delegates concurring:

"Section 1. To petition the Congress of the United States of America, as the same is hereby petitioned, to define the term 'corporation', as contained in paragraph 2 of section 39 of the Organic Act of Puerto Rico, approved March 2, 1917, so as to include therein any corporation, or any entity subsidiary or affiliated either directly or indirectly thereto, or any natural or juridical person who either directly or indirectly owns or acquires land for the benefit of a corporation.

"Section 2. To petition the Congress of the United States of America, as the same is hereby petitioned, to amend the Organic Act of Puerto Rico so as to authorize the Legislature of Puerto Rico to levy a progressive land tax on estates exceeding five hundred (500) acres owned or worked by any corporation, entity subsidiary or affiliated either directly or indirectly thereto, or any natural or juridical person who either directly or indirectly owns or acquires land for the benefit of a corporation.

"Section 3. To petition the Congress of the United States of America, as it is hereby petitioned, to amend the Organic Act of Puerto Rico so as to authorize the Legislature of Puerto Rico to lay an additional tax on real property owned or worked for the benefit of persons who do not reside in Puerto Rico.

"Section 4. To request the Hon. Santiago Iglesias, Resident Commissioner for Puerto Rico in the United States, to work for the passage of such measures as contained in the present resolution as well as of any other legislation making more effective the enforcement thereof.

"Section 5. A copy of this resolution, duly certified, shall be sent to the Resident Commissioner for Puerto Rico in the United States, to the Presidents of the Senate and of the House of Representatives of the United States respectively, to the Chair-

men of the Committees of Insular Affairs of the said Legislative Bodies, to the Secretary of Interior of the United States, and to the Hon. The President of the United States, Franklin D. Roosevelt.

I, Enrique González Mena, Secretary of the Senate of Puerto Rico, do hereby issue, sign, and seal this certificate in my office on this 4th day of March, 1938, to be forwarded to the Hon. The Attorney General of Puerto Rico, Benigno Fernandez Garcia.

(Signed) ENRIQUE GONZALEZ MENA,
Secretary of the Senate.

By (Signed) FCO. COLON GORDIANY,
Assistant Secretary.

TABLE 3.—NUMBER, ACREAGE, AND VALUE OF FARM, BY TYPE: 1935

Type of Farm	No. of farms	All land in farms (cuerdas)	CROPLAND (Cuerdas)			PASTURE (Cuerdas)			Other woodland (cuerdas)	All other land (cuerdas)	VALUE OF LAND AND BUILDINGS		
			Total	Harvested	Idle	Total	Clear	Woodland			Total	Per farm	Per cuerda
All farms	52,790	1,910,047	827,350	711,270	116,080	754,309	656,333	97,976	119,267	213,121	156,278,450	$2,960	$81.69
Sugarcane	6,620	758,934	346,154	299,939	46,215	312,791	276,899	35,892	27,488	72,401	87,546,610	13,225	115.37

Transcript of Record.

CENSUS OF PUERTO RICO, 1935. TABLE No. 4, PAGE 8. EXHIBITS 16 and 23.

TABLE 4.—NUMBER, ACREAGE, AND VALUE OF FARMS, BY TYPE AND TENURE: 1935

TYPE OF FARM AND TENURE	No. of farms	All land in farms (cuerdas)	CROPLAND (Cuerdas) Total	Harvested	Idle	PASTURE (Cuerdas) Total	Clear	Woodland	Other woodland (cuerdas)	All other land (cuerdas)	VALUE OF LAND AND BUILDINGS Total	Per farm	Per cuerda	PERCENT DISTRIBUTION Farms	All land in farms	Total cropland
All farms	52,790	1,913,047	827,350	711,270	116,080	754,309	656,333	97,976	119,267	212,121	$156,278,450	$2,960	$81.69	100.0	100.0	100.0
Owners	5,273	212,479	107,798	96,395	11,403	72,467	62,915	9,552	9,759	22,455	19,344,431	3,669	91.04	79.7	28.0	31.1
Managers	495	511,504	219,139	185,890	33,249	228,837	203,788	25,049	16,556	46,972	64,851,510	131018	126.79	7.5	67.4	63.3
Tenants	852	34,851	19,217	17,654	1,563	11,487	10,196	1,291	1,173	2,974	3,350,669	3,933	96.14	12.9	4.6	5.6

(CENSUS OF PUERTO RICO, 1935—BULLETIN No. 1, TABLE No. 2, PAGE 2, EXHIBIT 17.)

TABLE 2.—URBAN AND RURAL POPULATION OF PUERTO RICO: 1935, 1930 AND 1920

ITEM	Population			Increase 1930-1935 (5 2/3 Years)		Increase 1920-1930 (10 1/4 Years)	
	1935 (Dec. 1)	1930 (April 1)	1920 (Jan. 1)	Number	Percent	Number	Percent
Total	1,723,534	1,543,913	1,299,809	179,621	11.6	244,104	18.8
Rural	1,211,514	1,116,692	1,006,968	94,822	8.5	109,724	10.9
Per cent of total	70.3	72.3	77.5	52.8	—	44.9	—

PICO'S REPORT, "THE AGRICULTURAL PROBLEMS OF PUERTO RICO," EXHIBIT 19, TABLE 12:

TABLE NO. 12 DATA FOR THE FOUR MOST IMPORTANT SUGAR CORPORATIONS IN PUERTO RICO

CORPORATION	Acres Owned (#)	Acres Leased (#)	Production of Sugar In Tons (##)	Per Cent of Total Produced In Puerto Rico (3) (##)
	(1)			
South Puerto Rico Sugar Company	50,000	—	150,040	13.63
Central Aguitre Associates	22,911	18,023	128,712	11.69
	(2)			
Fajardo Sugar Co. of Puerto Rico	25,613	12,000	127,515	11.58
East Puerto Rico Sugar Company	31,000	17,000	114,133	10.37
Total	129,524	47,023	520,400	47.27

(#) Source: Farr & Co., "Manual of Sugar Companies," 1934, except as otherwise expressed.

(##) Source: "Thirty-Fourth Annual Report of the Governor of Puerto Rico," 1934. Exhibit No. 40.—Production of individual sugar mills were grouped according to ownership.

(1) Owned and leased, according to Clark's "Puerto Rico and its Problems," page #643.

(2) Includes 10,613 acres of land, reported by Diffie in "Puerto Rico, a Broken Pledge," Page 48, as owned by the Loiza Sugar Company, a subsidiary.

(3) Total production of sugar for 1934 was 1,100,909 tons.

PLAINTIFF'S EXHIBIT 20.

Manuel, Farr & Co., 1937, Page 23.

This company was incorporated February 28, 1919 in Puerto Rico, as a reincorporation of the Fajardo Sugar Co., of New York which was organized in 1905. For the past 32 years the company, with its predecessor, has been successfully engaged in the production of raw sugar. The Fajardo Sugar Co., controls through stock ownership (1) Loiza Sugar Co., (Acquired in 1925), which owns and operates Central Canovanas, situated adjacent to the Fajardo territory; (2) The Fajardo Development Co., owning 80 miles of fully equipped railroad, telephone system, etc., serving primarily the Fajardo Sugar Co., and (3) The Fajardo Sugar Growers Association, whose practically entire stock is held by the Greenwich Trust Co., of Greenwich, Connecticut, in trust for the benefit of the stockholders of the Fajardo Sugar Co., of Porto Rico.

The Company, with its subsidiaries and affiliates, owns 30,132 acres of land and holds under lease an additional 20,011 acres. Of this total area, approximately 20,753 acres were planted in cane (as of Feb. 4, 1936). In addition, they control through grinding contracts with colonos, some 16,096 acres, of which about 8,650 acres were planted in cane in February 1936. The acreage planted in cane is somewhat below normal, due to present Federal restrictions of sugar in Puerto Rico.

TYPE OF AGRICULTURAL EXPLOITATION IN PUERTO RICO, TABLE No. 1, EXHIBIT 21

TABLE 1. COMPARISON BETWEEN THE ARABLE LANDS AND POPULATION OF PUERTO RICO AND OTHER COUNTRIES (#)

COUNTRY	Population	Area (acres)	Acres per person	Arable lands (acres) 1929	Arable lands per person (acres)
Puerto Rico (1)	1,543,913	2,198,400	1.42	1,222,284	.79
Cuba (2)	3,768,192	28,264,960	7.50	.....	.....
Germany	65,092,000	115,801,512	1.78	50,853,771	.78
Austria	6,722,395	20,721,015	3.08	4,757,095	.71
Denmark	3,550,651	10,607,262	2.98	6,591,049	1.86
France	41,400,000	134,154,159	3.25	54,820,123	1.32
Hungary	8,683,740	22,989,218	2.64	13,757,443	1.58
Italy	42,158,817	76,634,885	1.82	34,128,698	.81
Norway	2,809,561	76,599,802	27.27	1,917,031	.68
Sweden	6,141,571	101,444,417	16.52	9,193,573	1.50
Soviet Russia	161,006,200	5,232,639,020	32.50	232,886,808	1.45
United States	122,775,046	1,937,123,647	15.77	355,493,503	2.08
Canada	9,934,500	2,242,920,199	225.77	61,419,692	6.18
China	474,487,000	4,406,250,050	9.29	.....	.....
Australia	6,476,032	1,903,621,500	293.95	29,279,524	4.52
				(3)	
Hawaii	368,336	4,100,480	11.13	440,579	1.20
Philippine Is.	13,082,336	73,216,000	6.06	39,657,000	3.28

Annual Statistics of the International Institute of Agriculture Rome 1930.
(1) United States Census of 1930
(2) Cuban Census of 1930
(3) Lands that may be dedicated to agriculture.

(Table V). Only .79 of an acre was improved and a meager of .49 of an acre cultivated. Very little over this area is considered arable.

PICO'S REPORT, PAGE 2, EXHIBIT 22.

A. THE SIGNIFICANCE OF AGRICULTURE.

. . . Since the beginning of the century the products of the soil have represented above 50% of the value of our exports and reached as high as 83.1% in 1920. (Table II and III). Although they declined to 62.9% in 1929 (a depression year), last year (1935) the direct products of the soil plus the refined sugar exported constituted almost three-fourths of the value of our exports. If to them we add the products of the elaboration of other agricultural crops, a total of 78.4% is reached. (Table IV). . . .

B. RELATION OF POPULATION TO LAND

. . . With its density of 901 persons per square mile for 1935 (*) only a few other areas surpass it. The limited land resources of the Island aggravates the problem. While the 1930 density showed 1.42 acres per capita, not all that area was productive.

EXHIBIT 24.

REPORT OF ESTEBAN A. BIRD

Pages 53, 54, 55, 56 (this last page is not copied as it is a drawing), 57, 58, 59 (this page is not copied either because it is a drawing), 60 and 61.

Part IV. Land Tenure in the Sugar Industry of Puerto Rico.

Large sugar-cane farms dominate the agricultural economy of Puerto Rico. This fact is of special importance in view of: (1) the small size of the Island, (2) the population density, (3) the importance of agriculture in its economic life, and (4) the predominance of sugar-cane cultivation over all other agricultural enterprises.

1. *General Land Tenure Situation.* The number of farms in Puerto Rico is very small in relation to total population or to farm laborers. According to the 1930 United States census, 260,789 workers 10 years of age and older were engaged in agriculture. Of this, only

(*) Special census conducted by the Census Bureau for the Puerto Rico Reconstruction Administration.

20% were farm operators, either owners, managers, or tenants; that is over 200,000 were laborers, most of them "peones" working for a daily wage. The number of farms is not only small but there were 5,506 less farms in 1930 than in 1910 in spite of the fact that the population increased during the same period by 426,000 inhabitants or a 33 per cent increase in 20 years.

If we examine types of tenure, the startling fact is revealed that although from 1910 to 1930 the total number of farms had decreased, those operated by managers *have been almost multiplied threefold;* that is, they increased from 1,140 in 1910 to 3,374 in 1930. It should be stressed that a large proportion of farms operated by managers are sugar-cane plantations controlled by corporations or partnerships. During the above mentioned period farms operated by owners or tenants decreased both in number and in area.

Manager-operated farms are considerably larger than farms worked by their owners. The average size of the farms operated by managers in 1930 was 200 acres as compared with an average size of 27 acres for farms worked by owners. Owners constituted 81 per cent of the operators, yet they only farmed 59 per cent of the land. In spite of the fact that the manager's group represented only a meager 6.4 per cent of all farm operators, they farmed 34 per cent of all the land.

The significance of manager-farming in the sugar industry is presented in the "Agricultural Problems of Puerto Rico", pages 20–21: (†)

> "The geographical distribution of manager-farming corresponds very closely to sugar-cane cultivation and to the best priced and most productive lands of the Island. Figure 1 (Average Value of Land and Buildings per acre) shows the concentration of the best land around the coast. If compared to Figure 2 (Per Cent that Improved Land Operated by Managers is of Total Improved Land) which represent the area dominated by managers a very close relation is shown. So the problems

(†) Professor Rafael Pico—"The Agricultural Problems of Puerto Rico". Planning Division Report—1936 Puerto Rico Reconstruction Administration.

is not limited to the fact that managers for corporations, partnerships or individuals holding large tracts of land dominate over one-third of the total land in farms, but is aggravated by the fact that this land is the richest in the Island. The significance of the concentration of the land under the tenure of managers is thus of tremendous importance."

2. Land Concentration in Puerto Rico. The importance of the large farm in the agricultural economy of the Island is further revealed by examining the size of farms as reported by the 1930 census. Most of the area of Puerto Rico is included in large farms, 100 acres or over in size. Farms 500 acres or over in size, although insignificant in *number* (only 367 out of 58,371 total farms) comprise almost one third of the farm-land *area* of the island.

"While the number of small farms is relatively very large, the acreage they include is insignificant. Farms less than 20 acres in size, most of them owned by their operators, constituted 72 per cent of the total number in 1930. Yet the acreage they comprise is only 12.4 per cent of the total. Even farms of less than 100 acres, 93.6 per cent of the total number of farms, include merely 37.3 per cent of the total land in farms in Puerto Rico (Tables X–XI).

"On the other hand large farms, 500 acres and over, although only 367 in number (0.7 per cent of the total farms), occupied 31.7 per cent of all the area of Puerto Rico included in farms. It is in the sugar-cane areas where these farms 500 acres and over in size occupy most of the area (Figure 3, Page 3, Percentage of Total Acres Included in Farms Over 500 Acres in Size). If we take into account the best lands, these classified as improved, a very similar graphical representation is seen (Figure 4, Percentage of Total Improved Land Included in Farms Over 500 Acres in Size). It is in the sugar-cane area of the coastal plain and interior valley of Caguas where the larger farms (500 acres and over) dominate most of the area of

the municipalities (sometimes 93 per cent of the total, and the best lands of that richest region of Puerto Rico." (1)

3. *Land Tenure in the Sugar Industry.*

There were 7,693 sugar-cane farms in Puerto Rico, according to AAA figures for 1934–35 as compiled by the Association of Sugar Producers of Puerto Rico. (1) Compared with 1930 figures for the whole Island, the sugar-cane farms comprised 15 per cent of the total number of farms reported for that year. But the acreage on these farms represents about 34 per cent of the total land in farms in 1930. (The AAA reports 765,375 acres in sugar cane farms. The proportion reported by the *area* is more than twice the relation between the *number* of farms. The sugar-cane farm is undoubtedly much larger than the average for the Island.

That the larger farm dominated in the sugar industry, is an established fact. Although there were only 166 sugar-cane farms which comprised over 500 acres, yet they included approximately one-half million acres of land or 65 per cent of the total included in sugar-cane farms throughout the Island. (Table 17, Appendix 1). If we examine the sugar-cane plantings grown in these large farms, the problem of land concentration is further stressed. Plantings of cane covering over 500 acres in size were only 59 in number (less than one per cent of the total 7,693), yet they comprised almost 60 per cent of the total cane acreage of Puerto Rico and produced over 67 per cent of the estimated production for 1934–35. (Tables 16 and 17, Appendix 1)

The control of the sugar industry is limited to a smaller number of farms than shown by the facts related to the 500-acres farms or plant-

(1) Professor Rafael Pico—"The Agricultural Problems of Puerto Rico", Pages 21–22.

(1) The actual number of farms is less than this figure. Under the AAA contracts a single producer often filed more than one contract; consequently, two or more farms may have been recorded as separate farms when the true facts are that there is only one operator working more than one farm. The only other statistics available on sugar cane farms reported by the United States Tariff Commission for 1929, in report No. 73, page 192, show only 6,502 sugar cane farms. However, AAA figures will be used because they are very complete and up to date.

ings. Although the number of large sugar estates is small, they control thousands of acres planted to sugar cane. They also controlled thousands of acres of pasture lands. The most revealing and startling figures are those shown in "Report to Senate on Producers under $10,000 Contracts" by the United States Department of Agriculture. (2)

Out of the total 124 contracts receiving $10,000 or more there are only 25 contracts of 21 payees receiving $100,000 or more. (Table 20 Appendix 1) This group included the largest sugar cane growers of Puerto Rico, with the exception of Luce & Co. (3) Their farms total almost 310,000 acres or over 40 per cent of the total land used in sugar-cane production. They cultivated 122,000 acres of cane land (about 38 per cent of the total) and received over 56 per cent of the benefit payments paid in Puerto Rico. It should be stressed that had Luce & Co. been included these figures would have been still higher. All of which shows the tremendous concentration of land in this important industry in the hands of a few producers.

What has been the predominant tendency in the land tenure of the sugar industry? There is only one answer to this question: There has been an ever-increasing concentration of the best sugar lands in the hands of a few. Small farms have decreased, perhaps not so much in number, but certainly in their relative importance when measured by the total number of acres included in the small farm group. Available for comparison are the figures of the AAA for 1934–35 and those of the 1930 census as published by the United States Tariff Commission. (1) In 1929 plantings of sugar cane less than 10 acres in size were 8.2 per cent of the total sugar-cane lands

(2) Document No. 274 of the U. S. Senate, 74th Congress, 2nd Session.

(3) Detailed production figures for all those producers receiving in 1935 more than $10,000 from the AAA are presented in this document. In this list some of the contracts were grouped under the corresponding producer, but still the list could stand further grouping in order to show actual management. It should also be mentioned that one of the largest sugar producers of the Island, Luce & Co. (the agricultural entity planting for Central Aguirre Associates), did not sign AAA contract and received no benefit payment, thus being omitted from the list.

(1) Report No. 73, page 192.

Only five years later, in 1934–35, this percentage had decreased to 6.05 per cent. What size group was benefited from this reduction? The above mentioned sources give the answer. In 1929 sugar-cane plantings over 100 acres in size represented 69.3 per cent of all the cane lands, but by 1934–35 they included 77 per cent of the total. If unchecked by governmental action the Island will soon see its cane lands, the best and most productive of the whole Island, in the hands of a few absentee and native landlords.

4. *The Importance of the Four Largest Absentee-Owned Sugar Corporations.*

Out of the 7,693 sugar-cane growers in the Island, four mills mainly absentee owned, control a large share of the industry in Puerto Rico. In 1935–36 about 45 per cent of the sugar manufacture came from their mills. Part of the crop they ground was cane supplied by Puerto Rican farmers or "colonos"; but at least two-thirds of it was produced in the lands of the sugar companies. This is substantiated by data for the 1933–34 crop as reported by the Association of Sugar Producers of Puerto Rico. During that year, out of 4,119,000 tons ground by the mills of these four corporations, 2,704,000 or 65.6 per cent of the total was their own cane. Thus, approximately *30 per cent of the sugar produced* in Puerto Rico comes from the lands of the four largest, absentee-owned sugar corporations.

The extent of their holdings in relation to the rest of the sugar industry can be seen in Figure 17, Page 56. Out of a total 765,000 acres controlled by the sugar industry these corporations operated over 166,000 acres or 21.7 per cent of the total. Their cane land holdings are relatively more important constituting 24 per cent of the lands planted to sugar cane in Puerto Rico (See Table 19, Appendix 1). Not all the land operated under their management is owned by these sugar interests. About 41 per cent of the land they operate is leased by them on long terms of 10 to 15 years.

The geographical location of these absentee-owned sugar corporations enhances their importance. Figure 5, page 7, shows the regions controlled by each of these corporations. The areas under

their management include the highest priced, most productive lands in Puerto Rico. Most of them are alluvial lands of great fertility. The above statement is substantiated by the fact that although only operating 24 per cent of the cane lands of Puerto Rico the sugar produced in these lands constitutes 30 per cent of the total production of the Island.

In the Northeastern alluvial coastal plain from Fajardo to Loiza, the Fajardo Sugar Co. of Puerto Rico dominates, operating 47,600 acres of which over 22,000 are in cane. The Eastern Puerto Rico Sugar Co. has extended its operations to a larger area. Its 54,700 acres of land (20,900 in sugar cane) are found in the fertile valleys of Caguas, Cayey and in the Eastern coastal plain even including some lands in the near-by Island of Vieques. In the irrigated and extremely productive Southern coast, Central Aguirre Associates and the South Puerto Rico Sugar Co. are the dominant enterprises. East of Ponce and as far as Guayama in the richest sugar section of the Island and perhaps of the world, Central Aguirre controls through a subsidiary partnership, Luce & Co., 34,800 acres of which 20,000 are planted to cane. The domain of South Puerto Rico Sugar Co. starts west of Ponce and operates as far West as Anasco. It owns the largest sugar mill in the Island and operates through another partnership (Russel & Co.) 29,000 acres of lands of which 13,000 are planted to sugar cane.

All of these companies with their extensive land holdings are openly or under cover violating Section 3 of the Joint Resolution of Congress approved May 1, 1900 and sustained in Section 39 of the 1917 Organic Act, which restricts corporate holdings to 500 acres. Although this restriction has been in the statutes since 1900 it has never been enforced. Recently the Attorney General of Puerto Rico started judicial proceedings against the Fajardo Sugar Growers for the violation of this act.

5. *Dangers of Land Concentration:*

In a densely populated agricultural country like Puerto Rico where, with the exception of needlework, manufacturing industries are quite unimportant, the land concentration means power. Power to dictate

over the lives of those who are not fortunate enough to own even the lot where their miserable huts stand; and who toil the land which is not theirs year after year with little hope of improving their miserable situation.

Concentration of the land in large farms in the sugar industry signifies the dominance of Puerto Rico's chief source of income by a few landowners. As a result of land concentration in an Island so densely populated the mass of the laborers live in a serf-like dependence upon the large landowners; crushed by exploitation, defenseless, they do not possess sufficient means to maintain properly their physical existence. As pointed out elsewhere the natural consequence of this state of affairs is a chronic condition of ruin and undernourishment which is being reflected in definite signs of physical degeneration.

An excellent source for estimating income distribution among sugar cane entrepreneurs is found in the AAA figures of benefit payments for 1935. As sugar exports to the United States had to be reduced to 783,939 short tons this quota was divided among all producers, and provision was made by the AAA for the payment of $4.00 per ton of cane of the 1935 crop left unharvested for sugar product. These payments as made up to May 1935 totalled $11,694,000 and were distributed as follows:

	Number of Producer Contracts	Payments Received	Percentage of Total Contracts	Percentage of Total Payments
	6,852	$2,965,000	98.2	25.4
	99	2,157,000	1.4	18.4
	25	6,572,000	0.4	56.2
Totals	6,976	$11,694,000	100.0	100.0

Luce & Co., one of the largest of the Island's producers, did not receive benefit payments and thus, is not included in the above table. For this reason the table understates the importance of the large landowners and producers. Nevertheless, the distribution of benefit payments point at a very critical situation. Twenty five contracts and 21 payees, who certainly represent a still more reduced number

of interests, (1) and which constitute less than 1 per cent of the producers, received more than half of the AAA payments. As these payments also represent an excellent index to gross receipts and net earnings, we can safely conclude that an insignificant number of corporations or private individuals, out of the thousands producing sugar cane in the Island, receive more than one-half of the income the Island derives from sugar. The basis for this maldistribution of income in our most important industry can be traced to the unequal distribution of the sugar-cane lands. (See Figure 18, page 59.)

Other evils result from this anti-social land tenure system. Over-specialization in just one crop to the exclusion of all other is one of these evils. The large sugar-cane estates, specially if owned by corporations, are held for sugar-cane production and nothing else. The land that cannot be planted to sugar-cane because of market conditions or AAA restrictions is left idle or devoted to such extensive utilization as pasture growing, which employs few men.

Of the total 309,000 acres held by the largest 21 sugar growers receiving benefit payments, only 122,000 were cultivated to sugar cane (See Table 20, Appendix I) the rest were devoted to pasture or left entirely idle. Some of these lands, if held by small land owners, would undoubtedly be used in raising food or other commercial crops. But large sugar-cane enterprises have no "subsidiary" agricultural activities. Even during the depression, when price of sugar was low, and now when production is limited by the quota system, no effort has been made to cultivate other crops in the poorer cane lands. Neither is the practice of the large sugar estates to allow their laborers a portion of their holdings in order that those unemployed could at least raise part of their food during the "dead" seasons.

The holding of vast extensions of lands in a definite area gives the landlord almost feudal power over the inhabitants of that zone. As the laborers in the large plantations have absolutely no property in the form of a home of their own or a plot of land, their lives depend on the work they can get in the sugar-cane fields of the landlords. The result is that their bargaining power is seriously im-

(1) In various cases a single enterprise appears as two or three different producers or contractors.

paired. For them there is no alternative but work at low wages, or starvation.

Finally, civic life in the sugar-cane areas is influenced indirectly by the nature of the land tenure system. Workers have little opportunities of freely manifesting their points of view in the political activities practiced under a democratic form of government, for a word or a vote against the landlord's political party very often results in his dismissal from the job. The election results in the cane districts of Puerto Rico are determined very closely by the decision of the large landowners controlling the zone.

Report of Esteban A. Bird

Pages 86, 87, 88.

Part VII—The Sugar Industry and Absenteeism

1. *The Extent of Absenteeism.*

Land concentration and absenteeism go hand in hand in the sugar industry of Puerto Rico. Absenteeism in terms of land concentration has been discussed in connection with land tenure (Part IV) and does not require any further comment.

It has been estimated that the sugar wealth is approximately 29 per cent of the total wealth of the Island, public and private, and over 36 per cent of the private wealth. (See Part I). This shows the importance of the sugar industry as a whole in the economic life of the country.

But it is estimated that out of the $152,000,000 sugar wealth, $40,000,000 (1) or 26 per cent is absentee owned. In terms of the total wealth and in terms of the total private wealth, the absentee sugar wealth is not alarming, approximately 7.75 per cent and 9.5 per cent respectively. Absentee wealth may thus be summarized as follows:

Absentee Sugar Wealth to Total Wealth	7.75%
Absentee Sugar Wealth to Total Private Wealth	9.50%

(1) Brookings Institute—"Porto Rico and Its Problems", page 418. The estimate of approximately an absentee investment of forty million dollars includes only holdings in securities of corporations. There are various mills not incorporated also controlled by absentee owners.

Absentee Sugar Wealth to Total Sugar Wealth 26.00%

In terms of the total sugar wealth, however, absentee ownership is alarming in view of the fact that the sugar industry is the most productive industry in the Island. Roughly, it is estimated that on the average, at least $3,000,000 per annum of the total sugar earnings are absentee earnings. (2)

2. *Absenteeism and the Creation of New Wealth.*

Undeveloped countries usually are developed through the investment of foreign capital. As long as there are new opportunities for the reinvestment of returns or for new investments, absentee investment is desirable. But when opportunties for reinvestment become scarcer year after year, absentee profits become a matter for serious consideration.

Puerto Rico has been undoubtedly benefited by foreign capital investments in the sugar industry. These investments made possible growing opportunities for the employment of capital and labor, and in turn lead to the development of a larger volume of business. For many years the three largest American corporations reinvested a large portion of their earnings in the Island and thus increased the opportunities for employment. These reinvestments, however, had a very undesirable feature. The sugar industry expanded horizontally and year after year acquired more and more acres in the Island. This expansion has been responsible for the gradual disappearance of the small farmer, backbone of the social system of any agricultural country. Moreover it has resulted in an extreme specialization of production which has made Puerto Rico dependent on a single industry. Although, as acknowledged elsewhere, this specialization has been very profitable, it is unsound speaking in terms of the future of a country.

(2) The estimate is very conservative. According to the U. S. Tariff Commission, "Report to the President on Sugar", table 65, page 121, the average return on investment per cuerda is $33.90. On the acreage reported by this same report, this represents a farm income of $9,463,693 and this represents only farm income, consequently, at higher returns. The total income may be estimated at anywhere from $12,000,000 to $15,000,000. Using the figure of 26 per cent of absentee owned sugar wealth to total sugar wealth, the minimum absentee profits are over $3,000,000.

From a practical point of view, it is impossible to determine whether the advantages of absentee reinvestments have over-balanced the disadvantages. Any answer to the question must necessarily be speculative in nature and depends on the point of view of the investigator. In our estimation until the post war period, in spite of all its limitations, absentee reinvestments have benefited the Island. No doubt it has been an important factor in the creation of new wealth and income, and in increasing the opportunities for the employment of labor.

After 1920 the extent of absentee ownership in the sugar industry presents a baffling problem which deserves serious consideration. As the opportunities for expansion in the sugar industry have become less and less limited, the amount of reinvestments have tended to diminish. This has resulted in a larger transference of earned capital from possible reinvestments in the Island to investment in foreign countries. An indication of this tendency may be observed from the financial data of Central Aguirre, South Puerto Rico and Fajardo Sugar, all of them highly absentee owned corporations. From 1920 to 1935 these corporations had profits amounting to $81,000,000. Of these $20,500,000 or 25 per cent were accumulated in surplus and $60,562,000 or three times as much were paid in dividends. Presumably, the accumulated surplus represents reinvestments, and paid dividends is representative of the transference of earnings. Consequently, three times as much capital has been transferred than reinvested.

The situation discussed above has great significance. Money spent for the creation of capital which in turn increases wealth and income and is conducive to larger employment of labor comes from principally accumulated savings whether by individuals or by business enterprises. If over a fifteen-year period the three largest and perhaps most important absentee corporations reinvested only ¼ of the profits in Puerto Rico, it is obvious that three-fourths of the earnings are not available for the creation of new industries and for the development of new business enterprises which increase wealth and income, and which provide in turn further opportunities for the employment of labor.

In such a poor country as Puerto Rico where individual savings are

so small, around $8.50 per capita, the transference of such a large proportion of earnings is most undesirable. If this capital was owned in Puerto Rico, it would tend to accumulate in the banking system where it would be available for the extension of credit. Assuming that the opportunities for reinvestment in the sugar industry would continue to decrease, this capital would be utilized in other forms of agriculture, or would tend to aid in the industrial development of the Island. This would be an important source of credit badly needed at present as the high rates of interest prevailing in the Island demonstrate.

3. *Conclusion.*

In view of the distribution of wealth which results in moderate accumulation of earnings by local individuals and enterprises; in view of limited opportunities for reinvestment in the sugar industry, unless it would be to absorb non-absentee holdings which would aggravate the present problem; and in view of the ever-growing population problem and the necessity of creating new opportunities for employment which can be facilitated through the accumulation of capital, it must be pointed out that there is an acute problem of absentee ownership which is desirable to check, and to correct.

BIRD'S REPORT, "THE SUGAR INDUSTRY IN RELATION TO THE SOCIAL AND ECONOMIC SYSTEM OF PUERTO RICO. (EXHIBIT 24).

TABLE 2 COMPARATIVE DEATH RATES IN CERTAIN AREAS OF (1) PUERTO RICO BY CAUSES OF DEATHS. -1935-

(Per 100,000 inhabitants)

Causes of Deaths	Puerto Rico	Sugar Area	Coffee Area	Tobacco Area
All Causes	1,840.0	1,835.0	1,814.0	1,446.3
Tuberculosis	304.5	226.5	184.6	277.6
Malaria	126.2	155.1	31.7	46.9
Diarrhea and Enteritis	368.6	371.0	300.3	265.0
Infant Mortality (2)	114.7	109.4	116.3	93.1

(1) Of 8 typical Sugar Municipalities: Santa Isabel, Vieques, Ceiba, Salinas, Fajardo, Naguabo, Luquillo and Yabucoa.

8 typical Coffee Municipalities: Maricao, Las Marias, Lares, Utuado, Ciales, San Sebastian, Adjuntas and Jayuya.

and 8 typical Tobacco Municipalities: Cidra, Comerio, Cayey, San Lorenzo, Aibonito, Caguas, Naranjito and Barranquitas.

(2) Per 1,000 births.

BIRD'S REPORT, "THE SUGAR INDUSTRY IN RELATION TO THE SOCIAL AND ECONOMIC SYSTEM OF PUERTO RICO. (EXHIBIT 24)

TABLE 15 THE SUGAR-CANE FARMS IN PUERTO RICO (NUMBER AND ACREAGE INCLUDED IN EACH SIZE GROUPS)
1934-35 (1)

Size of Farms	Farms	Per cent of Total Farms	Acreage	Per cent of Total Acreage
Less than 10 acres	3,780	49.14	16,711	2.18
11 to 25 acres	1,326	19.84	25,704	3.35
26 to 50 acres	897	11.65	31,998	4.18
51 to 200 acres	1,058	13.75	104,641	13.67
201 to 500 acres	276	3.59	87,729	11.46
501 to 1000 acres	90	1.17	61,647	8.05
Above 1000 acres	66	.86	436,945	57.11
Total	7,693	100.00	765,375	100.00

(1) Source: Agricultural Adjustment Administration, Sugar Section, San Juan, Puerto Rico.
Compiled by Carslos J. Benitez, Association of Sugar Producers of Puerto Rico.

BIRD'S REPORT, "THE SUGAR INDUSTRY IN RELATION TO THE SOCIAL AND ECONOMIC SYSTEM OF PUERTO RICO. (EXHIBIT 24)

TABLE 16 SUGAR-CANE PLANTINGS IN PUERTO RICO NUMBER AND ACREAGE INCLUDED IN EACH SIZE GROUPS.
1934-35

Size of Sugar-Cane Plantings	Number of plantings	Per cent of total plantings	Acreage in cane	Per cent of Total Acreage in cane
Less than 10 acres	5,641	73.33	19,239	6.05
10 to 25 acres	986	12.82	16,079	5.06
26 to 100 acres	752	9.78	37,086	11.66
101 to 200 acres	141	1.83	20,098	6.32
201 to 500 acres	114	1.48	35,259	11.09
Above 500 acres	59	.76	190,231	59.82
Total	7,693	100.00	317,992	100.00

Source: Agricultural Adjustment Administration, Sugar Section, San Juan, Puerto Rico.
Compiled by Carlos J. Benitez, Association of Sugar Producers of Puerto Rico.

BIRD'S REPORT, "THE SUGAR INDUSTRY IN RELATION TO THE SOCIAL AND ECONOMIC SYSTEM OF PUERTO RICO. (EXHIBIT 24) TABLE 17

NUMBER OF FARMS, TOTAL CUERDAS, CUERDAS IN SUGAR CANE, AND ESTIMATED PRODUCTION BY SIZE OF FARMS GROWING SUGAR-CANE IN PUERTO RICO IN 1934-35 (1)

Size (Cuerdas in sugar cane)	Number of farms	Per cent of total	Total cuerdas	Per cent of total	Cuerdas in sugar cane	Per cent of total	Estimated production (Tons)	Per cent of total
.01— 3.00	3,486	45.23	27,253	3.55	5,566	1.87	100,882	1.12
3.01— 6.00	1,329	17.24	25,847	3.37	6,277	2.11	115,441	1.28
6.01— 10.00	839	10.88	26,271	3.42	6,904	2.33	131,997	1.46
10.01— 25.00	989	12.83	49,031	6.38	16,090	5.42	330,454	3.66
25.01— 50.00	472	6.12	54,487	7.10	16,932	5.70	376,251	4.16
50.01— 75.00	175	2.27	28,094	3.66	10,855	3.66	250,815	2.770
75.01—100.00	104	1.35	25,649	3.34	9,136	3.08	220,926	2.44
100.01—200.00	144	1.87	43,680	5.69	20,365	6.86	514,480	5.69
200.01—499.99	111	1.44	66,090	8.61	33,457	11.27	928,976	10.28
500.00 and over	59	0.77	421,409	54.88	171,337	57.70	6,070,190	67.14
Total	7,708	100.00	767,811	100.00	296,919	100.00	9,040,412	100.00
Add: Difference			3,376		20,034 (2)			
Grand Total			771,187		317,053			

(1) Sugar cane farms reporting to the Agricultural Adjustment Administration (A.A.A.) most of them having contracts. Compiled by the Bureau of Agricultural Economics, University of Puerto Rico.

(2) Composed of 22,203 cuerdas of Gran Cultura less difference of 2,169 cuerdas.

BIRD'S REPORT, "THE SUGAR INDUSTRY IN RELATION TO THE SOCIAL AND ECONOMIC SYSTEM OF PUERTO RICO." EXHIBIT 24, TABLE 20.

PRODUCERS RECEIVING OVER $100,000 AS BENEFIT PAYMENTS FROM AGRICULTURAL ADJUSTMENT ADMINISTRATION (1) 1935 PUERTO RICAN SUGAR PROGRAM

Mill Area	PAYEE	AREA				
		Number of contracts	Total Payments	In Farm Cuerdas	Cultivated Cuerdas	Contracted (2) Sugar Cane Short Tons
Carmen	Carmen Centrale (Rafael Martinez Dominguez, agent)	1	$ 147,836.40	13,931	3,236	36,959.1
Cambalache	Central Cambalache (Jose Matienezo, agent)	1	410,393.60	14,667	7,195	102,598.4
Coloso	" Coloso (G. Cabrera, President)	1	286,945.60	7,934	3,730	71,736.4
Juanita	" Juanita, Inc. (Rafael Arrieta, agent)	1	122,074.00	3,473	1,390	30,518.5
Vannina	" Vannina (Secundino Lozana, agent)	1	171,952.80	7,219	4,325	42,985.2
Victoria	" Victoria, Inc. (Jose Rubert, agent)	1	107,480.80	5,029	2,486	26,870.2
Constancia (Toa)	Compania Azucarera del Toa (Manuel A. del Valle, agent	1	218,007.20	6,367	3,426	54,501.5
Plazuela & Los Canos	Total, Compania Giorgetti, S. en C. (E. Fernandez, agent	2	550,388.40	24,101	7,779	137,597.1
Defensa (and others)	Eastern Sugar Associates (By H. A. Hadler, attorney)	1	984,299.20	54,691	20,287	246,074.4
El Ejemplo	Heirs Ant. Roig, deceased (J. B. Carriaon, agent)	1	106,098.40	8,548	3,410	26,524.6
Monserrate	Jaime Calaf and Federico Calaf	1	223,216.00	5,791	2,337	55,804.0
Rufina	Mario Mercado Hijos (by Mario Mercado, partner)	1	230,990.80	12,576	2,710	57,747.7
Aguirre	Manuel Gonzalez Martinez	1	133,416.80	6,928	3,099	33,354.2
San Vicente and Carmen	Total, Rubert Hermanos, Inc. (R. M. Dominguez, agent)	2	289,083.60	12,564	4,992	72,270.9
Guanica	Russell & Co. Successors, S. en C. (by F. T. Maxwell, agent	1	428,696.40	29,317	11,088	107,174.1
Lafayette	Sucesores de C. & J. Fantauzzi (by G. Manatau)	1	328,258.80	17,043	6,523	82,064.7
Guamani	Sucesor de J. Gonzalez & Co. (G. Cautino, agent)	1	141,943.20	6,470	2,107	35,485.8
Mercedita	Sucesor de J. Serralles (by J. M. Giles)	1	262,899.60	8,912	4,449	65,724.8
Fajardo, Canovanas and Victoria	The Fajardo Sugar Growers Association (by F. P. Hastings, agent)	3	961,064.00	48,170	20,622	240,266.0
Roig	The Yabucoa Sugar Co. (J. Adalberto Roig, agent)	1	228,727.60	9,662	4,668	57,181.9
Boca, Chica	Wirshing & Co. S. en C. (J. E. Serralles, president	1	178,208 00	6,029	2,557	44,582.0
Total		25	$6,571,981.20	309,462	122,414	1,627,994.9

(1) Luce & Co., one of the largest sugar producers in the Island did not sign contract with the Agricultural Adjustment Administration, and thus received no benefit payment.
Central Eureka, Inc. (J. A. Fajardo, agent), with 22,592 tons of estimated contracted sugar cane, had not received final payment up to May 25, 1936.

(2) Represents cane not harvested for sugar production in 1935. Paid at the rate of $4.00 per short ton.

Exhibit 24,

[Title omitted.]

ORDER APPROVING BILL OF EXCEPTIONS.

San Juan, Puerto Rico, January 18, 1939.

Whereas, Rubert Hermanos, Inc., the defendant and appellant herein, did on the 23d of November, 1938, file the bill of exceptions upon which it proposes to base its appeal from the judgment rendered by this court on July 30, 1938;

Whereas, on December 5, 1938, the day fixed by order of this court for the settlement of said bill of exceptions, The People of Puerto Rico, complainant and appellee herein, gave its written consent to the approval of the bill of exceptions as filed by the appellant, suggesting however, certain specific amendments and corrections in the translation of the record from the Spanish to the English language;

Whereas, the appellant has expressly consented to the making of said amendments and corrections suggested by the appellee; and

Whereas, a careful examination of said bill of exceptions reveals that the same contains a true and correct statement of the proceedings had in the above entitled case;

Now, therefore, it is orderd by the Chief Justice of the Supreme Court of Puerto Rico that the secretary-reporter of this court be and he is hereby authorized and directed to make the said amendments and corrections in the bill of exceptions, in accordance with the stipulation of the parties; and that the said bill of exceptions as so amended and corrected be and it hereby is approved and made a part of the record in appeal.

It was so decreed as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

Attest: B. MARRERO RIOS, *Acting Secretary.*

[Title omitted.]

OPINION OF THE SUPREME COURT OF PUERTO RICO.

DELIVERED BY MR. JUSTICE TRAVIESO.

San Juan, Puerto Rico, July 30, 1938.

The purpose of the present quo warranto proceeding is to try the right and title of the defendant "Rubert Hermanos, Incorporated," to continue to do business as a corporation, in the Island of Puerto Rico. The material facts, as alleged in the amended complaint of The People of Puerto Rico, are as follows:

Rubert Hermanos, Incorporated, is a corporation organized under the laws of Puerto Rico, whose articles of incorporation, filed on April 27, 1927, provide as follows:

"Section 4. The ends and purposes for which and for any of which the corporation is formed and organized are to carry out all or any of the things hereinafter mentioned equally and to the same extent as natural persons might do, to wit:

"(a) To engage in the Island of Puerto Rico or elsewhere in the manufacture of sugar, molasses and other by-products derived from sugar.

. . . . . .

"(c) To erect, purchase, possess, lease or otherwise acquire, and to develop, promote, organize, operate, direct and manage enterprises the end and purposes of which shall be the planting, cultivation and cropping of sugar cane and the manufacture and sale of sugar, refined as well as raw, molasses and other by-products derived from sugar, and to construct, purchase, possess or otherwise acquire centrales, grinding mills, establishments and factories with all the buildings, installations, dependencies, accessories and implements that may be necessary or convenient for the manufacture and preparation of sugar, molasses and by-products from sugar. . . .

"(d) . . . To engage in agriculture in general. To plant, cultivate and harvest sugar cane, exploiting in such manner or in any other it may deem convenient, by the use of fertilizers and irrigation, either directly or through lessees or croppers

(*colonos*), the lands that it may possess; to purchase, sell and otherwise deal in sugar cane. . . .

(f) To purchase, take on lease, possess or otherwise acquire, sell, exchange and transfer or otherwise dispose of real property, rights in the realty, estates and plantations situated in or outside of the Island of Puerto Rico as far as it may be reasonably necessary to make possible the carrying out of the ends and purposes for which the corporation is formed and organized; *provided, however, that the right of the corporation to own and control lands in the Island of Puerto Rico shall be limited to five hundred acres only, and shall be subject to the restrictions provided in article three of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America.*" (Italics ours.)

The complaint charges that in violation of the foregoing provisions of its articles of incorporation and of article 3 of Joint Resolution No. 23 (31 Statutes at Large 716, U. S. C. A., Title 48, section 752) the defendant corporation has acquired and is now the owner with full dominion title of several tracts of land with a total area in excess of five hundred acres, which lands are used by said defendant corporation for planting, cultivating and harvesting sugar cane; and that the lands so owned, controlled and used by the defendant corporation have a total area of 12,188 acres.

The complainant prays for judgment declaring the defendant's charter forfeited, ordering the immediate dissolution of the defendant corporation, enjoining it from doing any further business in Puerto Rico and imposing upon said defendant the payment of a fine, with such other further remedies as in equity and justice may be deemed proper.

A motion to strike out certain parts of the amended complaint, filed March 16, 1937, and a demurrer filed on the same date having been overruled by this court on July 13, 1937, the defendant corporation filed its answer to the complaint on August 19, 1937.

The defendant's answer, which is in effect a plea in confession and avoidance, sets up the following specific defenses:

1. Defendant admits that it was incorporated for the purposes, among others, of engaging in agriculture, planting cane, owning, purchasing and possessing lands and plantations; but it alleges, that the aforesaid are not all of the ends and purposes for which it was incorporated and that by its articles of incorporation the defendant company was also authorized to engage in the manufacture of sugar, molasses and other by-products derived from sugar cane and to buy, sell and generally deal in sugar and its by-products.

2. That the five hundred acres limitation referred to in paragraph (f) of section 4 of defendant's articles of incorporation and provided by Article 3 of the Joint Resolution of May 1, 1900, is applicable only in case the defendant corporation should desire to engage in "Agriculture", as its principal object; and that the other restrictions of said joint resolution to which reference is made are applicable to the defendant corporation in carrying out its object of manufacturing sugar, which is an industrial purpose, and said restrictions prohibit the defendant from owning or possessing real property, except such as may be reasonably necessary to carry out the purposes for which the company was organized.

3. That from among the various objects for which it was organized and for which it was authorized by its articles of incorporation, the defendant corporation chose as its principal object the industry of manufacturing and producing sugar and molasses to be sold in the Island and in the United States, for which purpose it acquired the sugar factory known as "Central San Vicente", which has been equipped to grind up to 350,000 tons of cane per industrial year; that for the purpose of obtaining and securing the raw materials which are indispensable to enable it to engage in the manufacture of sugar, the defendant corporation, in the exercise of one of its incidental or implied powers. acquired also the lands reasonably necessary to obtain from them, by means of the planting and cultivation of sugar cane, part of the sugar cane which it needs each season for the industry of manufacturing sugar and molasses; that the lands so acquired do not supply all of the cane needed by the defendant's mill each season; that defendant would not be able to engage in the manufacture of sugar if it had to depend entirely on

the cane which it might buy from others; that in order to operate its sugar manufacturing business economically and efficiently, the defendant company must raise and supply a large part of the cane to be ground each season, and that the lands which it now owns are those indispensably and reasonably necessary for the production of part of the raw material needed by it; and that in doing the aforesaid things, the defendant has not in any way violated its franchise nor any provision of the Joint Resolution of May 1, 1900.

4. Defendant admits that it owns and controls 12,188 acres of land; but it denies being engaged in agriculture upon the said lands, as its principal corporate end or object. It alleges, in opposition, that part of said lands are used for the cultivation and production of the cane needed by the defendant corporation for the manufacture of sugar and molasses, which manufacture is the principal end or object of the defendant corporation and in which it has been engaged since it commenced to do business.

5. Defendant denies that the ownership or control by it of such large acreage of land is contrary to any public policy of The People of Puerto Rico, and it further denies that such ownership or control is in conflict with the economic welfare of the people of the Island.

6. That the joint resolution restricting the ownership or control of lands by corporations was approved by Congress in the year 1900; that since that time and until recently several corporations have been organized in Puerto Rico for the purpose of engaging in the business of manufacturing sugar and many of said corporations acquired lands in excess of five hundred acres for the purpose of obtaining from said lands the cane necessary for the manufacture of sugar and molasses; that The People of Puerto Rico tolerated, permitted and encouraged the development of the sugar industry through all those years, without ever starting any proceedings to challenge or question the right of a sugar corporation to own or control more than five hundred acres, whenever the ownership or control of such lands should be reasonably necessary for the production of the cane required for the manufacture of sugar; that The People of Puerto Rico has collected and still collects taxes upon the properties of said corporations and that through its officers, departments and

other governmental agencies always had or could have had knowledge of the lands acquired by those corporations so engaged in the manufacture of sugar; and that notwithstanding those facts it was not until the year 1935 that The People of Puerto Rico for the first time instituted proceedings to challenge the right of said corporations to hold more than 500 acres of land for the aforesaid industrial purposes.

7. That the defendant corporation acquired the central or sugar mill and almost all of the lands which it now owns or controls, in the year 1927; that since that date it has used said mill and lands in the business of manufacturing sugar and molasses, obtaining from said lands part of the cane required for its said sugar manufacturing business; that during all that time the defendant has acted openly and publicly, having all of said lands recorded in its corporate name in the registries of real property of Puerto Rico and paying to the Government all taxes levied upon its properties, without the Government of Puerto Rico having ever objected to the business of the defendant corporation or against its ownership and control of more than 500 acres of land, until the present proceedings were instituted; and that by reason of its acquiescence and of its delay in bringing this action, the complainant is estopped from claiming the forfeiture of the defendant's corporate charter.

At the trial held March 7, 1938, the Attorney General of Puerto Rico argued on behalf of the complainant that the defendant's answer virtually admitted all the principal allegations of the complaint and that the only issue of fact presented by the pleadings was the denial by the defendant of the allegations of the complaint to the effect that the ownership and control by the defendant corporation of such large acreage of land is contrary to the long established and frequently announced public policy of The People of Puerto Rico and conflicts with the economic welfare of the people of the Island.

In support of its said allegations the complainant offered in evidence: (1) Volume 33 (Parts 1, 2, 3, 5 and 8) of the Congressional Record, containing the debates on Joint Resolution No. 23 of May 1, 1900, for the purpose of establishing the public policy which the Congress intended to put in practice in Puerto Rico by the passage of said

resolution; (2) the 30th and the 31st Annual Reports of the Governor of Puerto Rico to the Secretary of War, dated, respectively, August 21, 1930, and September 1st, 1931, for the purpose of establishing the public policy of The People of Puerto Rico relative to the ownership and control by corporations of large areas of land; (3) the Annual Report of the Secretary of the Interior of the United States for the fiscal year 1937 (pages 327 to 330); (4) the opinions and decisions of the Supreme Court of Puerto Rico in the cases of *Compania Azucarera de la Carolina* v. *Registrar*, 19 P. R. Rep. 143, *Compania Azucarera del Toa* v. *Registrar*, 19 P. R. Rep. 724, *La Isabella Grove, Inc.* v. *Registrar*, 24 P. R. Rep. 240, *The Porto Rican Leaf Tobacco Co.* v. *Registrar*, 24 P. R. Rep. 245, and *Baetjer et al., Trustees* v. *Registrar*, 48 D. P. R. 647; (5) the resolution of the Public Service Commission of Puerto Rico in the matter of the petition filed by the United Porto Rican Sugar Company for a franchise to take waters from the Humacao River for irrigation, appearing in the Commission's Annual Report to the Governor, for the year 1930-1931, pages 177 to 186; (6) Law No. 33 of the Legislative Assembly of Puerto Rico, approved July 22, 1935; (7) Law No. 47, approved August 7, 1935; (8) Law No. 45, approved August 7, 1935; Law No. 44, approved August 6, 1935; (9) Concurrent Resolution of the Legislative Assembly of Puerto Rico, passed February 19, 1935. All of which documents were admitted over the objection of counsel for the defendant, whose exceptions were noted.

The complainant also offered in evidence: (a) Census of Puerto Rico for the year 1935 taken by the Puerto Rico Reconstruction Administration and published by the Government Printing Office, Washington, 1937; (b) Report on "The Agricultural Problems of Puerto Rico," by Rafael Pico, professor at the University of Puerto Rico and adviser to the Puerto Rico Reconstruction Administration, dated May 18, 1936; (c) Report of Farr & Co., sugar brokers; (d) Monograph entitled "Types of Agricultural Exploitation in Puerto Rico," published by the College of Agriculture and Mechanical Arts of the University of Puerto Rico, November 1935; (e) Table No. 4, page 8, Census of Puerto Rico, 1935, by P.R.R.A.; (f) "Report on the Sugar Industry in relation to the social and economic system

of Puerto Rico," by Esteban A. Bird, Chief Economic Research Section of the Puerto Rico Reconstruction Administration, January 23, 1937. The admission of said documents was duly objected to and exception taken as to each of them by counsel for the defendant.

At the close of complainant's case the defendant made a motion to dismiss the complaint. And said motion having been denied, the defendant rested without introducing any evidence in support of its special defenses.

We have no doubt as to the admissibility or pertinence of the evidence introduced by the complainant. Most of said evidence consists of statistical facts and legislative history of which the courts may and should take judicial notice when specifically brought to their attention. See: Section 36, par. 8, Law of Evidence of Puerto Rico; *City Bank Farmers' Trust Co.*, v. *United States*, 74 Fed. (2d) 692; *Ponce* v. *Roman Catholic Apostolic Church in Puerto Rico*, 210 U. S. 296, 52 L. Ed. 1068; *Monk* v. *Ebert*, 219 Pac. 452, 192 Cal. 186; *Chicago R. I. & P. Ry. Co.* v. *Gist*, 190 P. 878, 79 Okl. 8; *James* v. *Kuhn*, 8 P. (2d) 526, 121 Cal. App. 69; *Fortinberry* v. *State*, 283 S. W. 146; *Ex Parte Lewis*, 135 So. 147, 101 Fla. 624; *United States* v. *Payne*, 264 U. S. 446, 68 L. Ed. 782; *Greene County* v. *Lydy*, 172 S. W. 376, 263 Mo. 77; *Miller* v. *United States*, 47 Fed. (2d) 424; *Fidelty Union Trust Co.* v. *Reeves*, 98 N. J. Eq. 412; *Grimmer* v. *Tenement House Department of the City of New York*, 204 N. Y. 370; *Hill* v. *Rae*, 158 P. 826, 52 Mont. 378, L.R.A. 1917-A 495; *Jasper County Farm Bureau* v. *Jasper County*, 286 S. W. 381, 315 Mo. 560; *Frost* v. *Corporation Commission of Oklahoma*, 26 F. (2d) 508, reversed (1929) 278 U. S. 515, 73 L. Ed. 483; *Sligh* v. *Kirkwood*, 237 U. S. 52, 59 L. Ed. 835; *Tolfree* v. *Wetzler*, 25 F. (2d) 553.

The following is a resume of the historical facts, records and statistics to which our attention has been called.

Puerto Rico has a total area of 3,435 square miles, equivalent to 2,198,400 acres, of which only 1,222,284 are tillable. The population of the Island in 1898, when Puerto Rico was ceded to the United States, was 953,243 souls. The total area of land devoted to the cultivation of sugar cane was at that time 70,000 acres.

The Congressional debates in the year 1900, during the discussion of the bill to impose 25 percent of the Dinley Tariff on all goods imported from Puerto Rico into the United States and vice versa and of the Organic Act (Foraker Law) for the establishment of a civil government in Puerto Rico, reveal the foresight of those members of Congress who expressed the fear that free trade between Puerto Rico and the United States would make the Island too attractive for the investment of large amounts of capital in sugar and tobacco, with the probable result of placing most if not all of the tillable soil of the island under the ownership and control of the sugar and tobacco trusts. This fear was intensified by the fact that the year before, in 1899, the Island had been devastated by a cyclone, with the consequent loss of crops, and depreciation and mortgaging of its best lands. To prevent the development of an agrarian monopoly which would own and control the best lands of this small and densely populated Island and which might eventually convert the Island into a large sugar factory, served by a half-slave proletariat and to encourage the division of lands into small tracts, owned, controlled and cultivated by their owners, the Congress enacted Joint Resolution No. 23, approved May 1, 1900. Section 3 of which provides as follows:

"Section 3. . . . No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable."

From the Middle Ages to the present days sovereigns and parliaments have considered it their duty to protect their subjects and citizens against attempts by large combinations of capital to monopolize the lands adapted to agriculture, which are the basic source of wealth of any community. Numerous are the statutes and precedents which might be cited in support of the validity and wisdom of legislation enacted for the purpose of enforcing such an agrarian policy. The Statutes of Mortmain in England and the legislation of Spain might be cited as precedents. The Congress of the United States, in order to protect the people of the unincorporated Territories, enacted laws prohibiting the holding of lands by corporations in excess of 5,000 acres, even though some of those Territories had areas of 100,000 and 200,000 square miles. See: 24 Stat. L. 476, First Supplement to Rev. Stats. of U. S., 2nd Ed., p. 556, amended by Law of March 9, 1888, 25 Stat. L. 45, First Supp., p. 582. See also: *McQuaide* v. *Enterprise Brewing Co.*, 14 Cal. App. 315, 111 Pac. 927; *Commonwealth* v. *Railway Co.*, 132 Penna. 591, 19 Atl. 291; *Ronaldson & P. Co.* v. *Bynum*, 122 La. 687, 48 S. 152; *Jackson* v. *Western Union Tel. Co.*, 269 Fed. 598; *Shelby* v. *Hummel*, 266 U. S. 633, 69 Law Ed. 479; *Commonwealth* v. *N. Y. L. R. & W. R. Co.*, 114 Pa. St. 340, 7 Atl. 756; *Late Corporation of the Church, etc.*, v. *United States*, 136 U. S. 1, 34 L. Ed. 481; *Trustees of the Catholic Church* v. *Manning*, 72 Md. 116, 19 Atl. 599; *House of Mercy* v. *Davidson*, 90 Tex. 529, 39 S. W. 924; *In re Hood Realty Co.*, 2 F. (2d) 334; *In Re McGraw Estate*, 11 N. Y. 66, affirmed, 136 U. S. 152; Washburn on Real Property, 6th Ed., sections 134 and 135; 4 Thompson on Corporations, 3d Ed., sections 2451 and 2475; Tiffany on Real Property, sec. 504.

In the year 1917 the subject of the limitation of lands that may be legally owned or controlled by corporations in Puerto Rico was again debated by the Federal Congress. The prohibition was re-enacted and incorporated into the new Organic Law, known as the "Jones Act", as follows:

"Section 39. . . .

"That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the Joint resolution approved May first,

nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.'"

The wisdom and foresight of the sponsors of the insular agrarian policy embodied in the above mentioned federal legislation, has been demonstrated by the subsequent events. Puerto Rico, whose density of population in 1900 attracted the attention of Congress, has since then almost doubled the number of its inhabitants, the census of 1935 taken by the Puerto Rico Reconstruction Administration, a federal agency, showing that the Island had on that date a population of 1,723,534 inhabitants or an average of 501 persons per square mile; that 72.3 percent of said population lives in the rural zone and depend entirely on agricultural activities for their subsistence; that the Island has an average of something less than one acre of tillable land per rural inhabitant; that there are 251,000 acres, that is one-fifth of all the lands adapted to agriculture, used for the production of sugar cane; that not less than 196,757 acres, or something more than 70 percent of the total acreage planted to sugar cane, are owned or controlled by companies which in turn are controlled almost exclusively by absentee stockholders; that the companies so organized and controlled produce, normally, 59 percent of the total sugar output of the Island, thus controlling almost 40 percent of the total insular agricultural wealth, and that during the decade from 1920 to 1930 the combined acreage of all the rural estates managed by their owners was decreased by 318,232 acres, while the total acreage operated under strange management was increased by about 325,425 acres.

This court must necessarily take judicial notice of all the foregoing facts, which constitute the elements of the most intricate problem confronting the people of this Island. And we must agree with counsel for the complainant in that the existence of large land-

holdings in a small agricultural country, abnormally overpopulated and without basic industries other than those required for the preparation of agricultural products for the market, is contrary to the economic welfare of its people.

In the year 1935, the Legislative Assembly of Puerto Rico, inspired by a desire to cooperate with the National Administration in the development of its plans for the economic reconstruction of the Island, approved several statutes, the common purpose of which is to provide the necessary remedial measures for curbing the existing land monopolies and preventing further violations of the provisions of the Organic Act, *supra*. The said statutes are:

1. Law No. 33, approved July 22, 1935, which confers to the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all Quo Warranto proceedings for violations of the provisions of Section 752, Title 48, U. S. C. A., and provides that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of Quo Warranto. (Laws of 1935, Special Session, page 418.)

2. Law No. 44, approved August 6, 1935, which provides that private property may be taken or destroyed "to carry out and develop any general plan of economic reconstruction for the general benefit of the insular community, implanted by The People of Puerto Rico or by the Government of the United States . . . and specially for the redistribution or division of lands concentrated in large estates, or for the establishment of public centrals or factories for the manufacture of sugar or for any industry or activity." (Laws of 1935, Special Session, page 508.)

3. Law No. 47, approved August 7, 1935. The pertinent provisions thereof read as follows.

> "Section 1. Section 2 of An Act entitled 'An Act establishing Quo Warranto proceedings,' approved March 1, 1902, is hereby amended as follows:
>
> "'Section 2.— . . .; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto

Rico or of any of its statutes, the Attorney General or any district attorney, either on his own inititative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise.'

"'When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"'In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain.'

"Section 2. Section 6 of an Act entitled 'An Act establishing *Quo Warranto* proceedings,' approved March 1, 1902, is hereby amended as follows:

"'6. . . .

"'Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the de-

fendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.' " (Laws of 1935, Special Session, page 530.)

The defendant has insisted through these proceedings that Joint Resolution No. 23 of May 1st, 1900, is void because it contains an arbitrary discrimination against agricultural corporations; that the Legislative Assembly of Puerto Rico has no power to confer to this Supreme Court original exclusive jurisdiction in *Quo Warranto* proceedings based on a violation of the Laws limiting the amount of land that may be held by corporations, such jurisdiction corresponding exclusively to the Federal Court of Puerto Rico; and that the Complaint does not state facts sufficient to constitute a cause of action against the defendant corporation. A further discussion of said questions is unnecessary. The same questions were raised, fully discussed and decided against the defendant corporations in *The People of Puerto Rico* v. *The Fajardo Sugar Company of Porto Rico et als.* (Quo Warranto No. 1), 50 D.P.R. 163, and 51 D.P.R. 876.

Had we had any doubts as to the power of the Legislature of Puerto Rico to pass Laws Nos. 33, 44 and 47, *supra*, the said doubts would have been dispelled by the unanimous descision rendered by the Supreme Court of the United States in the case of *Puerto Rico* v. *The Shell Co. (P.R.) Limited, et al.*, 302 U. S. 253, 260, in which the question involved was the validity of the local anti-trust act, which by its Section 3 confers jurisdiction upon the district courts of the Island in respect of violations of that Act. It was claimed by the defendant company that the Sherman Anti-trust Act of 1890, supplemented by the Clayton Act of 1914, covered the entire field embraced by the

local anti-trust act, and the latter, therefore, was void; and that Section 4 of the Sherman Act confers jurisdiction upon the several district courts of the United States. In upholding the validity of the local statute, the Supreme Court, through Mr. Justice Sutherland, said:

"1. Section 14 of the Foraker Act, passed April 12, 1900, c. 191, 31 Stat. 77, 80, provided that the statutory laws of the United States, not locally inapplicable, should have the same force and effect in Puerto Rico as in the United States, with certain exceptions not material here. Section 27 (P. 82) provided 'That all legislature powers hereby granted shall be vested in a legislative assembly . . .' And by sec. 32 (pp. 83–84), it was provided that the legislative authority 'shall extend to to all matters of a legislative character not locally inapplicable . . .' These various provisions are continued in force by secs. 9, 25 and 37 of the Organic Act of March 2, 1917, c. 145, 39 Stat. 951. These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect of which this court said in *Clinton* v. *Englebrecht*, 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; and in *Hornbuckle* v. *Toombs*, 18 Wall. 648, 655–656, we said: 'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State Legislature.' See also *Cope* v. *Cope*, 137 U. S. 682, 684, where this court, speaking of this typical general provision contained in the Utah Organic Act, said that, with the exceptions noted in the provision itself, 'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State.' In *Maynard* v. *Hill*, 125 U. S. 190, 204, the essential similarity of the various provisions in respect of the powers of territorial legislatures was pointed out, and it was said that what were 'rightful subjects of legisla-

tion' was to be determined 'by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represented.'

"The grant of legislative power in respect of local matters, contained in sec. 32 of the Foraker Act and continued in force by sec. 37 of the Organic Act of 1917, is as broad and comprehensive as language could make it. The primary question posed by the challenge to the validity of the act under consideration is whether the matter covered by the act is one 'of a legislative character not locally inapplicable.' It requires no argument to demonstrate that a conspiracy in restraint of trade within the borders of Puerto Rico is clearly a local matter, and that it falls within the precise terms of the power granted by secs. 32 and 37 of the respective acts in which the grant is found. The power being given without express limitation, a conclusion that the present exercise of the power is precluded by the existence of sec. 3 of the Sherman Act must rest upon the assumption that a congressional statute penalizing specific local behavior and a statute of Puerto Rico to the same effect cannot coexist. With due regard to the status of the territory, the character of its established government, the positive terms of the congressional grant of power, and the lack of conflict between the two acts, that assumption must be rejected.

"2. The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories. *Gromer* v. *Standard Dredging Co.*, 224 U. S. 362, 370; *Porto Rico* v. *Rosaly, supra*, p. 274. The effect was to confer upon the territory many of the attributes of quasi-sovereignty possessed by the states—as, for example, immunity from suit without their consent. *Porto Rico* v. *Rosaly, supra.* By those acts, the typical American governmental structure, consisting of the three independent departments—legislative, executive and judicial—was erected. 'A body politic'—a commonwealth—was created. 31 Stat. 79, sec. 7, c. 191. The power of taxation, the power to enact and enforce laws, and other characteristi-

cally governmental powers were vested. And so far as local matters are concerned, as we have already shown in respect of the continental territories, legislative powers were conferred nearly, if not quite, as extensive as those exercised by the state legislatures.

"This comprehensive grant of legislative power made by Congress plainly recognizes the great desirability of devolving upon the local government the responsibility of searching out local offenses and prosecuting them in the local tribunals. The insular Supreme Court in this case declared in emphatic terms the wisdom of such local control in respect of the matter dealt with by the act in question. Although striking down, with evident reluctance, the act as invalid, that court said: 'The right of the Insular Legislature and officers to prosecute and punish such monopolies as may be set up within our jurisdiction is really inestimable. It was so understood by our Legislature when it took upon itself to legislate on the subject. This is a wholesome and necessary legislation that should be enforced through the insular courts. It must be admitted that The People of Puerto Rico has a special interest in prosecuting before the courts those citizens who violate its own laws. No matter how interested the National Government may be in prosecuting such offenses, instances might occur where the latter would pass unnoticed by the federal officers, or where, for some reason or other, such officers might not display the same activity and interest that is to be expected from the local officials.'".

It should require no argument to demonstrate that the monopolization of agricultural lands within the borders of Puerto Rico is also a clearly local matter, falling within the precise terms of the powers granted by sec. 32 of The Foraker Act and sec. 37 of the Organic Act of March 2, 1917.

The defendant is a corporation authorized to engage in agriculture and expressly restricted by its charter to the ownership and control of not to exceed five hundred acres of land. It has admitted by its pleadings that it owns and controls 12,188 acres of land, the greater

part of which are planted to sugar cane. We are convinced that the complainant has made out a case which entitles it to the relief prayed for in its complaint. Our conviction is not shaken in the least by any one of the two specific defenses set up by the defendant.

The fact that the defendant corporation is also authorized by its articles of incorporation to engage in the industry of manufacturing sugar cannot operate as a release of said corporation from the restrictions imposed by the Organic Act and by its own articles of incorporation (sec. 4, par. (f), *supra*) upon said corporation when the same engages in agriculture. The aims and purposes of the law may not be so easily circumvented and defeated. The upholding of such defense would make it possible for one corporation, notwithstanding the provisions of the Organic Act and of its own articles of incorporation, to own, control and monopolize all of the sugar lands of Puerto Rico, by simply claiming that it is engaged in the manufacture of sugar, as its principal business, and that it needs all of said lands to plant, cultivate and produce thereon all the cane that it needs for its mill, equipped to produce over one million tons of sugar.

Of much less force is the plea that The People of Puerto Rico is estopped from claiming at this time the forfeiture of the defendant's corporate franchise, because of the government's acquiescence and of its delay in requiring compliance with the law. The continuance violation of the prohibitory statute during a number of years cannot be invoked by the violater as the basis or source of its alleged right to continue *ad perpetuan* in the ownership and control of lands in excess of the amount permitted by the statute. The allowance of such pleas would make it possible for the owner of a gambling establishment or bawdy house to claim immunity from prosecution and the right to continue in such illegal business upon proof of its operation for a number of years without interference by the police authorities.

The overwhelming weight of authority is in favor of the proposition that a statute cannot be repealed by non-user unless such non-user is accompanied by the enactment of irreconcilable statutes or the establishment of an opposite legislative policy, or unless circumstances have so changed that the object of the statute has vanished or its

reason ceased. 39 Cyc. p. 1085, par. F; 59 C. J. sec. 532, page 928; *Pearson* v. *International Distillery et al.*, 34 N. W. (Iowa) 1, affirmed 128 U. S. 1. In *Gulf Refining Co.* v. *City of Dallas*, 10 S. W. (2d) 151, 158, is was said:

> ". . . As we understand, the doctrine of 'obsolete law,' as applied in some instances to the common law, has never been recognized as applicable to a legislative enactment and certainly not to a constitutional provision by any of the courts of this country."

In *Interstate Forwarding Co.* v. *Vineyard*, 3 S. W. (2) 947,957, the plea of "non-user" was overruled, the Court of Civil Appeals of Texas using the following language:

> ". . . In its last analysis, appellant's position is that, if an officer charged with the enforcement of a particular law fails to enforce that law against all persons required to observe the provisions of same, the officer has thereby suspended the law. To this position we cannot assent. The duty rests upon the citizenship to observe the plain mandates of the law as much so as it rests upon an officer charged with the enforcement of its terms and provisions to discharge that duty, and the validity of a statute cannot thus be impaired, but only its enforcement interfered with. In other words, the law remains in full force and effect, although, so to speak, in a state of hibernation, because of nonenforcement. This is in keeping with the following rules of statutory construction:"

The Supreme Court of the United States, in *Chicago, etc., R. R. Co.* v. *Iowa*, 94 U. S. 155, 162, said:

> "It is a matter of no importance that the power of regulation now under consideration was not exercised for more than twenty years after this company was organized. A power of government which actually exists is not lost by non-user. A good government never puts forth its extraordinary powers, except under circumstances which require it."

And in *Louisville & N. R. Co.* v. *United States,* 282 U. S. 740, 759, the same Court said:

> "Long continued practice and the approval of administrative authorities may be persuasive in the interpretation of doubtful provisions of a statute, but cannot alter provisions that are clear and explicit when related to the facts disclosed. *A failure to enforce the law does not change it.* The good faith of the carriers in the transactions of the past may be unquestioned, but that does not justify the continuance of the practice." (Italics ours.)

See: *Standard Oil Co.* v. *Fitzgerald,* 86 Fed. (2d) 799; *State* v. *Burr,* 84 So. 61, 74; *State* v. *Meek,* 67 Pac. 76; *State* v. *Nease,* 80 Pac. 897; and *Parker* v. *Board of Dental Examiners,* 14 Pac. (2d) 67, in which it was held:

> ". . . Delayed action on the part of those who are charged with the execution of laws will not be permitted to annul the law. It may be considered by the court as a reason for the mitigation of punishment, but the judicial department is not absolutely bound to regard it."

It is true that The People of Puerto Rico has not until now taken direct and positive action to enforce the limitations of the Joint Resolution of May 1, 1900. But it is also true that the provisions of said joint resolution were reenacted and made a part of the Organic Law of 1917, which action is, in our judgment, a clear expression of the will of Congress to continue in force and to maintain alive the legislative policy providing for a limitation of land tenure by corporations engaged in agriculture in Puerto Rico. Our attention has not been called to the passage, either by Congress or by the local Legislature, of any statute establishing a different or irreconcilable legislative policy. On the contrary, the evident and clear intent and purpose of Laws Nos. 33, 44 and 47 of 1935, *supra,* was to provide the procedural means for the enforcement of the land tenure restrictions. And this Supreme Court in all of its decisions, rendered in administrative appeals against the refusals of registrars to record deeds of purchase in favor of corporations, involving more than 500 acres

of land, consistently held that it was not one of the functions of the registrars to pass upon the validity of such acquisitions, while suggesting that the proper remedy should be a direct and positive action by the State against the infringing corporation to test its right to hold such lands in violation of the statute and for the cancellation of its charter.

For the foregoing reasons it is our opinion that judgment should be rendered in favor of the plaintiff and against the defendant herein, with the following pronouncements:

1. Adjudging and decreeing that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres.

2. Ordering and decreeing the forfeiture and cancellation of the license of the defendant corporation, of its articles of incorporation and further ordering the immediate dissolution and the winding up of the affairs of said corporation.

3. Imposing on the defendant the payment of all costs and disbursements had in these proceedings, including the sum of two thousand dollars ($2,000.00) for attorneys' fees.

4. Sentencing said defendant to the payment of a fine in the sum of three thousand dollars only, said sum having been fixed taking in consideration the delay on the part of the complainant in instituting these proceedings.

MARTIN TRAVIESO,
Associate Justice.

[Title omitted.]

JUDGMENT OF SUPREME COURT OF PUERTO RICO.

San Juan, Puerto Rico, July 30, 1938.

For the reasons stated in the foregoing opinion, judgment is hereby rendered in favor of The People of Puerto Rico, petitioner herein, and against Rubert Hermanos, Inc., defendant, with the following pronouncements.

1. It is adjudged and decreed that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres.

2. The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation.

3. The defendant corporation is adjudged to pay the costs and disbursements of this proceeding, including the sum of two thousand dollars ($2,000) as attorney's fees.

4. The defendant corporation is sentenced to pay a fine in the sum of $3,000.

It was thus pronounced and ordered by the court as witness the signature of the Chief Justice. Mr. Justice Wolf concurred in many parts of the opinion and in the first pronouncement of the judgment. As regards some of the other pronouncements he has some doubts as to the power of the court, which might perhaps be cleared up after a more careful study, and he has also some doubts, even if the court had such power, whether the same should be exercised in the way it

has been done, reserving to himself a fuller statement of his views. Mr. Justice de Jesus took no part in the decision of this case.

EMILIO DEL TORO,
Chief Justice.

Attest: B. MARRERO RIOS, *Acting Secretary.*

Judgment entered July 30, 1938.

[MEMORANDUM: Petition for appeal, filed August 3, 1938; order allowing appeal, August 9, 1938; citation, dated August 9, 1938, returnable within sixty days and service thereof; appeal bond in the sum of $25,300, Porto Rican & American Insurance Company, surety; order approving bond, August 10, 1938; and orders of enlargement of time for docketing case are here omitted. A. I. CHARRON, *Clerk.*]

[Title omitted.]

ASSIGNMENT OF ERRORS.

[Filed August 3, 1938.]

Now comes Rubert Hermanos, Inc., defendant-appellant, in the above entitled proceeding and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Puerto Rico in the above entitled proceeding there is manifest error, to wit:

1. The Supreme Court of Puerto Rico erred in entertaining jurisdiction over this proceeding and in overruling defendant-appellant's demurrer to the jurisdiction of the said Supreme Court of Puerto Rico.

2. The Supreme Court of Puerto Rico erred in failing to hold that as this proceeding has been brought because of the alleged violation of a United States statute, namely, section 3 of the Joint Resolution of Congress, of May 1, 1900 (31 Stats. at Large 716, U. S. Code, Title 48, Section 752) exclusive jurisdiction is vested in courts of the United States.

3. The Supreme Court of Puerto Rico erred in failing to hold that Act No. 33 enacted by the Legislature of Puerto Rico on July 22, 1935 (Laws of Puerto Rico, Special Session 1935, p. 418), which attempts to confer upon the Supreme Court of Puerto Rico original

jurisdiction of all quo warranto proceedings that the Government of Puerto Rico may institute for violations of Section 752, Title 48 U. S. Code, was enacted in excess of the delegated authority of the territorial legislature because it is not local legislation and attempts to confer jurisdiction in cases where only the United States has authority to confer jurisdiction.

4. The Supreme Court of Puerto Rico erred in failing to hold that said Act No. 33 of July 22, 1935, was enacted in excess of the delegated authority of the Legislature of Puerto Rico because said Act attempts to amend an act of the Congress of the United States, to wit, Section 3 of the said Joint Resolution of May 1, 1900 (31 Stats. at large, 716, U. S. Code Title 48, Section 752) by providing that the violations of said Act of Congress shall constitute sufficient cause for The People of Puerto Rico to institute a proceeding in the nature of quo warranto in an Insular Court, the Supreme Court of Puerto Rico.

5. The Supreme Court of Puerto Rico erred in failing and refusing to hold that Act No. 47 enacted by the Legislature of Puerto Rico on August 7, 1935 (Laws of Puerto Rico, Special Session 1935, p. 531) was enacted in excess of the delegated authority of the Legislature of Puerto Rico as said law attempts to amend the Joint Resolution of Congress of May 1, 1900 (31 Statutes at Large 716, U. S. Code Title 48, Section 752) by providing penalties for the violation of Section 3 of said Joint Resolution of Congress where Congress has failed to provide any such penalties, and by extending the scope of the said joint resolution to entities and acts not comprehended within the said legislation by Congress.

6. The Supreme Court of Puerto Rico erred in failing and refusing to hold that in enacting Act No. 33 approved July 22, 1935, the Legislature of Puerto Rico has invaded a legislative field occupied by and reserved to the Congress of the United States in and by the Joint Resolution of Congress of May 1, 1900 (31 Statutes at Large, 716, U. S. Code, Title 48, Section 752), and Section 39 of the Organic Act of Puerto Rico.

7. The Supreme Court of Puerto Rico erred in failing and refusing to hold that in enacting Act No. 47 approved August 7,

1935, the Legislature of Puerto Rico has invaded a legislative field occupied by and reserved to the Congress of the United States in and by the Joint Resolution of Congress of May 1, 1900 (31 Statutes at Large 716, U. S. Code Title 48, Sec. 752) and Section 39 of the Organic Act of Puerto Rico.

8. The Supreme Court of Puerto Rico erred in holding that The People of Puerto Rico may prosecute alleged violations of an act of The Congress of the United States, to wit, the Joint Resolution of Congress of May 1, 1900 (Statutes at Large 716, U. S. Code, Title 48, Section 752) and that the Legislature of Puerto Rico may confer jurisdiction of such prosecutions on Insular courts.

9. The Supreme Court of Puerto Rico erred in holding and finding as a ground for the dissolution of the defendant-appellant that it had violated the provisions of its articles of incorporation regarding the ownership and control of lands because jurisdiction of proceedings of quo warranto based on the violation of the articles of incorporation is vested by the Quo Warranto Law of March 1, 1902 ("An Act establishing quo warranto proceedings"), as amended by Act 47 of August 7, 1935, in the District Courts of Puerto Rico, and the Supreme Court of Puerto Rico is not given jurisdiction in such cases.

10. The Supreme Court of Puerto Rico erred in failing and refusing to find that Law No. 33 enacted by the Legislature of Puerto Rico on July 22, 1935, is invalid because it violates the provisions of Section 34 of the Organic Act of Puerto Rico as to the entitling of bills, in that the said act amends "An Act establishing quo warranto proceedings" approved March 1, 1902, as amended, without any mention of the act so amended in its title.

11. The Supreme Court of Puerto Rico erred in failing and refusing to find that Act No. 33 enacted by the Legislature of Puerto Rico on July 22, 1935, is invalid because it contravenes and violates the provisions of Section 34, paragraphs 8 and 9 of the Organic Act of Puerto Rico, because Section 1 of said Act No. 33 of July 22, 1935, provides that violations of the provisions of Section 752, Title 48, United States Code, shall constitute sufficient grounds for institut-

ing proceedings of quo warranto, without reenacting and publishing the said Section 752, Title 48, United States Code.

12. The Supreme Court of Puerto Rico erred in failing and refusing to hold that Act No. 47 enacted by the Legislature of Puerto Rico on August 7, 1935, contravenes and violates the provisions of Section 34 of the Organic Act of Puerto Rico as to entitling in that under a title giving notice only of the amendment of Sections 2 and 6 of "An Act establishing quo warranto proceedings" approved March 1, 1902, as amended by Act No. 37 approved April 24, 1931, there are incorporated in the body of said Act No. 47 provisions not covered by the title of the Act purported to be amended and not germane thereto, namely, the provisions of confiscation of properties, nullity of contracts, cancellation of inscriptions in the registries of property and penalties, fines and imprisonment.

13. The Supreme Court of Puerto Rico erred in failing and refusing to hold that the said Act No. 33 approved July 22, 1935 contravenes the provisions of the Organic Act of Puerto Rico prohibiting the enactment of *ex post facto* laws, in that the said Act punishes violations of the Joint Resolution of the Congress of the United States of May 1, 1900 committed prior to the enactment of said Act 33 with the penalties of ouster and dissolution, when no penalties were theretofore attached to such violations.

14. The Supreme Court of Puerto Rico erred in failing and refusing to hold that the said Act No. 47 approved August 7, 1935, violates the provisions of the Organic Act of Puerto Rico prohibiting the enactment of *ex post facto* laws in that the said Act created penalties for violations of the Joint Resolution of the Congress of the United States of May 1, 1900, when no penalties were provided by law at the time the said violations were committed and prior to the enactment of said Act No. 47.

15. The Supreme Court of Puerto Rico erred in failing and refusing to hold that Act No. 47 approved August 7, 1935, contravenes the provisions of the Organic Act of Puerto Rico requiring the reenactment and publication at length of laws revived, amended, extended or conferred, in that the provisions of said Organic Act of Puerto Rico, violations of which are made grounds for quo warranto, are not reenacted or published at length in the said Act.

16. The Supreme Court of Puerto Rico erred in overruling defendant-appellant's demurrer that the amended information does not establish facts sufficient to constitute a cause of action.

17. The Supreme Court of Puerto Rico erred in overruling defendant-appellant's demurrer that the separate causes of action set out in the amended information were not stated separately.

18. The Supreme Court of Puerto Rico erred in denying defendant-appellant's motion to cancel the notice of *lis pendens* filed by the petitioner ~~in the~~ registries of property. Defendant-appellant duly noted an exception to the order of the court of July 13, 1937, overruling the motion for cancellation of the notice of *lis pendens*.

19. The Supreme Court of Puerto Rico erred in overruling the motion to strike certain allegations of the amended information.

20. The Supreme Court of Puerto Rico erred in holding that the Joint Resolution of Congress of May 1, 1900 (31 Stats. at Large, 716, United States Code, Title 48, Section 752) prohibits a corporation organized under the laws of Puerto Rico for the principal purpose or object of manufacturing sugar and molasses from sugar cane from owning land in excess of five hundred acres devoted only to the purpose of growing cane to furnish raw material to manufacture, in such amounts as may be reasonably necessary for the objects for which it is created.

21. The Supreme Court of Puerto Rico erred in overruling defendant-appellant's motion to dismiss the complaint made after the presentation of petitioner's evidence and at the close of its case.

22. The Supreme Court of Puerto Rico erred in entering judgment against defendant-appellant.

23. The judgment of the Supreme Court of Puerto Rico is contrary to law.

24. For other errors appearing in the record.

By reason whereof defendant-appellant prays that the judgment of the Supreme Court of Puerto Rico be reversed and set aside.

San Juan, Puerto Rico, August 3, 1938.

J. SIFRE, JR.,
HENRI BROWN,
Attorneys for Defendant-Appellant.

[Title omitted.]

OATH.

ISLAND OF PUERTO RICO,
DISTRICT OF SAN JUAN, SS.

Jose Gonzalez Hernandez, having been duly sworn, deposes and says: I am vice president of the defendant corporation, Rubert Hermanos, Inc., and have personal knowledge of the properties and business of the corporation and business thereof; that the fair value of the properties belonging to the said defendant corporation is in excess of $2,000,000; that during its corporate life the defendant corporation has earned a reasonable profit on the value of its said properties; that the said defendant corporation has existing contracts for the purchase and grinding of sugar cane of a value of not less than $50,000; that the corporate charter of the defendant corporation and its right to do business as a corporation, is fairly worth in excess of the sum of $50,000 and that the forced dissolution of the said corporation will occasion loss and damage in excess of the sum of $50,000.

JOSE GONZALEZ HERNANDEZ.

Subscribed and sworn to before me in the City of San Juan, Puerto Rico, this third day of August, 1938, by Jose Gonzalez Hernandez, of age, property owner, and to me personally known.

B. MARRERO RIOS, *Acting Clerk,*
Supreme Court of Puerto Rico.

[Title omitted.]

STIPULATION AS TO RECORD ON APPEAL.

[Filed in the Supreme Court January 21, 1939.]

Now come the parties hereto and stipulate that the transcript of the record on appeal shall consist of the following documents, which shall be printed, to wit:

1936

1. Jan. 28 Motion for leave to file an information in the nature of Quo Warranto.
2. Jan. 28 Information and all exhibits attached thereto.
3. Jan. 29. Order granting leave to file the information.

1936

4. Feb. 27 Motion to strike certain allegations of the information.

5. March 9 Minutes of hearing of this date on the oral motion of the complainant requesting that the motion to strike should be ignored.

6. June 8 Opinion overruling above motion.

7. June 8 Order overruling oral motion requesting that motion to strike should be ignored.

8. June 19 Minutes of hearing of this date of motion to strike.

1937

9. Feb. 19 Order deciding motion to strike.

10. Feb. 26 Amended information.

11. Mar. 16 Motion to strike to the amended information.

12. Mar. 16 Demurrers to the amended information.

13. Apr. 12 Minutes of hearing of motion to strike and of demurrers.

14. Apr. 27 Motion requesting order cancelling notice of lis pendens.

15. May 3 Answer to the motion requesting the cancellation of notice of lis pendens.

16. May 3 Minutes of hearing of motion filed requesting order cancelling the lis pendens.

17. July 13 Order of this date overruling motion to strike filed against amended information.

18. July 13 Order of this date overruling the demurrers filed to the amended information.

19. July 12 Opinion of the court in People of Puerto Rico *v.* Fajardo Sugar Company of Porto Rico et al., No. 1, Quo Warranto.

20. July 13 Order of this date overruling the motion for the cancellation of the notice of lis pendens.

21. July 12 Opinion of this date in People of Puerto Rico *v.* Fajardo Sugar Company of Porto Rico, et al., No. 1, Quo Warranto.

22. July 19 Exception to the order overruling the demurrer to the amended information.

1937

23. July 19 Exception to the order overruling motion requesting the cancellation of lis pendens.
24. July 19 Exception to the order overruling motion to strike certain allegations of the amended information.
25. Aug. 19 Answer to the amended information.

1938

26. Jan. 27 Order setting case for final hearing.
27. March 7 Minutes of the hearing.
28. March 7 (Trial) Bill of exceptions and order approving same.
29. July 30 Opinion deciding case on its merits.
30. July 30 Final judgment.
31. Aug. 3 Petition for appeal.
32. Aug. 3 Assignment of errors.
33. August 3 Affidavit of Jose Gonzalez Hernández.
34. Aug. 9 Order allowing appeal and fixing amount of supersedeas and cost bond.
35. Aug. 9 Reference to citation and service of same.
36. Aug. 10 Appeal bond
37. Aug. 10 Order approving bond.
38. Sept. 30 Order extending time for filing transcript of record on appeal.
39. Nov. 9 Order extending time for filing transcript of record on appeal.

1939

40. Jan. 21 This stipulation.
41. Jan. Translator's certificate.
42. Jan. Certificate of secretary reporter of the Supreme Court of Puerto Rico as to the correctness of the record.

San Juan, Puerto Rico, January 20, 1939.

B. FERNANDEZ GARCIA,
Attorney for the People of Puerto Rico.

JAIME SIFRE, JR.,
HENRI BROWN,
Attorneys for Rubert Hermanos, Inc.

[Title omitted.]

TRANSLATOR'S CERTIFICATE.

I, B. Marrero Rios, official interpreter and translator of the Supreme Court of Puerto Rico do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the City of San Juan, Puerto Rico, this twenty-third day of January, 1939.

B. MARRERO RIOS,
Official Interpreter and Translator of the Supreme Court of Puerto Rico.

[Title omitted.]

CLERK'S CERTIFICATE.

I, B. Marrero Rios, acting secretary-reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the order of the court.

I further certify that the translation of said papers and proceedings has been revised by the official translator of this court, as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Puerto Rico, this twenty-third day of January, 1939.

B. MARRERO RIOS,
Acting Secretary-Reporter of the Supreme Court of Puerto Rico.

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On April 20, 1939, this cause came on to be heard, and was fully heard by the court, Honorable Scott Wilson, Circuit Judge, and Honorable John A. Peters and Honorable John C. Mahoney, District Judges, sitting.

Thereafter, to wit, on September 27, 1939, the following Opinion of the Court and Dissenting Opinion were filed:

OPINION OF THE COURT.

September 27, 1939.

WILSON, J. This is an appeal from a judgment of the Supreme Court of Puerto Rico in a complaint or information in the nature of a *quo warranto* proceeding against the appellant, Rubert Hermanos, Inc., brought in 1936 by the People of Puerto Rico through its Attorney General, in which the petitioners seek to declare a forfeiture of the franchise of the appellant corporation and dissolve it, and to impose a statutory fine.

The reasons for the forfeiture assigned in the complaint are a violation of Sec. 3 of the Joint Resolution No. 23 of Congress approved May 1, 1900 (31 Stat. 716), Title 48, Sec. 752, U.S.C.A.; and of Section 39 of the Organic Law of Puerto Rico enacted March 2, 1917, known as the Jones Act; and a violation of the appellant's Articles of Association, together with an allegation that the defendant has violated the public policy of the Island of Puerto Rico as established by the acts above referred to and by Act No. 33 and Act No. 47 of the Puerto Rican legislature both enacted in 1935, all of which expressly limit the holding of land by a corporation organized under the corporation laws of Puerto Rico and engaged in agriculture to not exceeding 500 acres.

A motion to strike portions of the original complaint was allowed, but a motion to strike certain statements in the amended complaint was disallowed; and a demurrer to the amended information was filed by the respondent and overruled. The respond-

ent then filed an answer in which was admitted certain of the allegations of the complaint, viz.: that it is a corporation organized under the laws of Puerto Rico; that it is engaged in the cultivation of sugar cane and the manufacture of sugar on the Island; that it owns over 12,000 acres of land devoted to that business; but it denies that the ownership of so large an acreage of land in Puerto Rico is contrary to the public policy of the Island as established by the Acts of Congress and the statutes of the Puerto Rican legislature above referred to; or that it conflicts with the economic welfare of the People of the Island; that the People of Puerto Rico have recognized this large ownership by the appellant by collecting taxes thereon with full knowledge of its extent ever since the organization of the corporation in 1927; and not until the year 1935 has any question been raised as to the illegality of the corporation's real estate holdings, but it denies jurisdiction of the Supreme Court of Puerto Rico under Acts of the Puerto Rican legislature hereinafter referred to, since it contends that Acts No. 33 and No. 47 enacted by the Puerto Rican legislature in 1935 vesting jurisdiction of these proceedings in the Supreme Court of Puerto Rico are each null and void.

At the close of the plaintiff's case the respondent corporation offered no evidence in support of the allegations of its answer, but moved to dismiss the information substantially on the same grounds on which its demurrer and answer were based.

The insular Supreme Court on the overruling of the defendant's demurrer and denial of its motion to dismiss, entered judgment in favor of the People of Puerto Rico, with the following pronouncements or reasons for its judgment:

". . . that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in exeess of 500 acres."

The insular Supreme Court is a statutory court. Its jurisdiction in a complaint that acts of a corporation are merely contrary to the public policy of the Island is not a sufficient allegation alone to warrant a forfeiture of the franchise of a corporation. If made a ground of jurisdiction of the insular Supreme Court in *quo warranto* proceedings, the complaint must be based specifically on the statutes which declare the public policy.

The Acts of Congress and of the Puerto Rican legislature applicable to these proceedings are as follows:

Sec. 3 of the Joint Resolution of Congress, No. 23, approved May 1, 1900, provided that:

"No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."

Sections 34 and 39 of the Organic Act of 1917 provide:

"Sec. 34. That . . . all laws enacted by the legislature of Puerto Rico, shall be reported to the Congress of the United States, as provided in Section twenty-three of this Act, which hereby reserves the power and authority to annul the same. . . ."

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

"No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be reenacted and published at length."

"Sec. 39. (2d par.) That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Puerto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres."

Act No. 30 of March 9, 1911, Sec. 3, Par. 4, referring to the powers of corporations organized under this Act provided:

". . . That the power of any agricultural corporation (The Act of 1902 reads 'any corporation', omitting the word 'agricultural', Rev. Stats. & Codes of 1902, *supra*, Civil Code, Sec. 32-(4), p. 759) organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred."

Prior to 1935 exclusive jurisdiction of *quo warranto* proceedings was vested in the insular District Courts of Puerto Rico. It was not until the passage of Act No. 33 of July 22, 1935 (Laws of Puerto Rico, Special Session, 1935, p. 418), and Act No. 47 of August 7, 1935 (Laws of Puerto Rico, Special Session, 1935, p. 539), that the legislature of Puerto Rico enacted several statutes, the common purpose of which was to provide the necessary remedial measures for curbing existing land monopolies and preventing further violations of the provisions of Sec. 3 of the Joint Resolution No. 23 of Congress and Sec. 39 of the Organic Act approved March 2, 1917.

Act No. 33 of the Puerto Rican legislature approved July 22, 1935, conferred on the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *quo warranto* proceedings for violations of the provisions of Section 752, Title 48, U. S. C. A., and was entitled:

"An Act To Confer Upon The Supreme Court Of Puerto Rico Exclusive Original Jurisdiction In Quo Warranto Proceedings That The Government Of Puerto Rico May Institute For Violations Of The Provisions Of Section 752, Title 48, United States Code, And For Other Purposes", and provides:

"Section 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all Quo Warranto proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 28, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of Quo Warranto."

This Act is clearly null and void, see *Gallardo et al.* v. *Porto Rico Railway, Light & Power Co.*, 18 Fed. (2d) 918; *People of Puerto Rico* v. *Torres*, 28 P. R. R. 782.

Act No. 47 of the Puerto Rican legislature approved August 7, 1935, provides:

"Section 1. Section 2 of an Act (of the Puerto Rican legislature) entitled 'An Act establishing Quo Warranto proceedings', approved March 1, 1902, is hereby amended as follows:

" 'Section 2. In case any person should usurp, or unlawfully hold or execute any public office . . . or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for (leave to file) an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for (leave to file) an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. . . ."

Section 6 of the Act of March 1, 1902, by Act No. 47 is also amended as follows:

"Section 6. In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; . . .

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; . . . and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in case of condemnation proceedings."

No questions of fact are involved in this appeal. The ground on which the appellant bases its prayer that the judgment of the Supreme Court appealed from be reversed and set aside is that the Supreme Court of Puerto Rico is without jurisdiction to entertain this proceeding; or that the allegations of a violation of a statute are not sufficiently specific to warrant a dissolution of a corporation and a forfeiture of valuable property.

Summarily stated, the appellant's contention is (1) that no jurisdiction is vested in the insular Supreme Court of *quo warranto* proceedings against this corporation on the ground that its powers are *ultra vires* of its Articles of Incorporation; and (2) that Act 33 of July 22, 1935, and Act 47 of August 7, 1935, by which jurisdiction is purported to be conferred on the Supreme Court of Puerto Rico founded on violation of Sec. 752, Title 48, U. S. C. A., which is Sec. 3 of the Joint Resolution of Congress enacted May 1, 1900, and carried into the Organic Act of Puerto Rico by Section 39 thereof, are each null and void, because the legislature had no power to enact them; and because both Acts violate Section 34 of the Organic Act as to the subject and title of bills and amendment of laws when enacted by the Puerto Rican legislature; or if either statute is valid the complaint does not set forth with sufficient particularity a violation thereof to warrant the forfeiture of the charter and property of this corporation.

The appellee contends that the provisions of the Joint Resolution No. 23 of the Congress of May 1, 1900, restricting corporations engaged in agriculture in Puerto Rico to the ownership and control of not to exceed 500 acres of land, emphasized and in effect reenacted by Article 39 of the present Organic Act of March 2, 1917, was an effective expression of the public policy of the United States with reference to the ownership and control of agricultural lands in Puerto Rico; and that the acts of the insular legislature conferring jurisdiction on the insular Supreme Court in *quo warranto* cases based upon violation of such Acts of Congress, are valid enactments of the legislature of Puerto Rico; that the insular Supreme Court therefore had jurisdiction of this proceeding; that

the titles of each of the Acts, Nos. 33 and 47 (Special Session of 1935), sufficiently state the purpose of the Act within the meaning of Section 34 of the Organic Act, since each of these Acts has but a single purpose, within the meaning of that section of the Organic Act; and, neither of them offends against the provisions of that section with relation to amending prior insular statutes.

It is obvious, we think, that the local Puerto Rican legislature under its grant of legislative powers contained in the Organic Act cannot itself amend an Act of Congress, or the Organic Act. The broad statement to that effect in *Puerto Rico* v. *The Fajardo Sugar Co. of Porto Rico et al.*, 50 D. P. R. 163, and 51 D. P. R. 876, was clearly erroneous. The point requires no consideration; nor do we think the Puerto Rican legislature can by implication or direct enactment confer on the Supreme Court of Puerto Rico jurisdiction of offenses in violation of Acts of Congress, or amend an Act of Congress by imposing a penalty where none existed before. *Auk Bay Salmon Canning Co.* v. *United States*, 300 Fed. 907; *People of Puerto Rico* v. *Torres*, 28 P. R. R. 783. It may well be that the Puerto Rican legislature can vest jurisdiction of offenses in violation of its own statutes and can legislate as to matters in the same field as Congress is occupying, provided its legislation does not conflict with Congressional mandates. This point, however, as we view it, is not involved in this case.

The court said in the case of *People of Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 263:

> "In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act [known as the Jones Act], and Sec. 32 of the Foraker Act."

The Joint Resolution No. 23 of Congress is, of course, a federal law. *People of Puerto Rico* v. *The Fajardo Sugar Co. et al.*, 50 D.

P. R. 163 (not yet published in the English type) in which the Supreme Court of Puerto Rico stated:

"It is a statute of purely constitutional character; an amendment to our Organic Act having no other function or scope than to limit the power delegated to our Legislature to create and regulate the juridical persons engaged in agriculture."

These Acts, No. 33 and No. 47, amend and enlarge the scope of a law of the United States, viz.: the Joint Resolution of Congress of May 1, 1900, which forms a part of the present Organic Act of Puerto Rico, which is likewise a federal law, by attaching a penalty for its violation, *i.e.*, the forfeiture of its corporate franchise, and conferring jurisdiction upon an insular court to impose and enforce such penalty through the instrumentality of a proceeding in the nature of *quo warranto*. It thus at the same time legislates upon a matter within the exclusive jurisdiction of the Congress of the United States and purports to vest jurisdiction in an insular court of a matter as to which exclusive jurisdiction is reserved to courts of the United States by its laws. Title 28, Sec. 371, U. S. C. A. It converts a federal statute, enacted for the only purpose of imposing limitations upon the legislative powers of the legislature of Puerto Rico into a penal statute, and in so doing disregards the limitation upon its legislative powers prescribed in the Organic Act of Puerto Rico.

The appellant does not deny the power of the legislature of Puerto Rico, to confer jurisdiction upon the Supreme Court of Puerto Rico, or other insular courts, of *quo warranto* proceedings. Its contention, however, is that the power of the Puerto Rican legislature to confer original jurisdiction on the Supreme Court of Puerto Rico in such cases is limited to matters falling within its legislative ambit. This statute purports to vest jurisdiction in the Supreme Court of Puerto Rico upon a ground over which it has no legislative control, viz.: to amend a federal statute by attaching a penalty and give jurisdiction to an insular court of violations of federal offenses.

That the Joint Resolution which forms a part of the Organic Act

of Puerto Rico is a federal statute is unquestioned. In the decision in *People of Puerto Rico* v. *The Fajardo Sugar Co. et al.*, 50 D. P. R. 163, June 4, 1936, the Supreme Court of Puerto Rico recognizes that fact, stating:

"It is a statute of a purely constitutional character; an amendment to our Organic Act having no other function or scope than to limit the power delegated to our Legislature to create and regulate the juridical persons engaged in agriculture."

This court has repeatedly held that the Organic Act is a federal law—*Gerardino et al.* v. *People of Porto Rico*, 29 Fed. (2d) 517; *Municipality of Rio Piedras* v. *Serra, Garabis & Co., Inc.*, 65 Fed. (2d) 691, 698.

It is unimportant that the title of an Act does not declare an intention to amend a federal statute. Its character as an amendment must be determined by its effect rather than by its declaration of intention.

"Whether an act is amendatory of a prior act is to be determined by a comparison of their provisions, and its character is not determined by the fact that it does or does not profess to be an amendment. The form which the latter act may take is not material, and although it purports to be complete in itself, if it intermingles different provisions with the old ones or adds new provisions creating a new law from the prior act, then the new one is amendatory." 59 Corpus Juris, p. 851; *In re Lovett*, 2 Fed. (2d) 307.

Similar legislation by the Territory of Alaska was declared invalid as an amendment of an act of Congress in *Auk Bay Salmon Canning Co.* v. *United States, supra*, in which the court said:

"'We see no escape from the conclusion that to make the changes in those laws which were attempted to be made by the territorial Legislature was to alter, amend, and to some extent repeal the acts of Congress relating to the same subject, and was within the prohibition of the Organic Act. To extend the period of the closed season, to enlarge the area affected by it, and to increase the penalties for violation of the fishing regulations, was to amend and alter the existing law. This conclusion is not obviated by the declaration therein contained that the statute shall not be construed as in any wise to alter, amend, modify, or repeal any of the fish laws, and that its purpose is only to provide for further and additional regulations for additional protection to the salmon and insure a future supply thereof, and it is not ground for holding otherwise that the alterations and amendments did in fact result only in

greater protection to the fish and were in the interests of and operated to the welfare of the inhabitants of Alaska."

This court held in *Gallardo et al.* v. *Porto Rico Railway, Light & Power Co.*, 18 Fed. (2d) 918, that Section 290 of the Political Code enacted by the legislature of Puerto Rico, could neither extend nor limit the application of Section 2 of the Organic Act of Puerto Rico.

In the *Territory of Nebraska* v. *Lockwood*, 3 Wall. 236, the court held that the territorial legislature could not authorize *quo warranto* proceedings to investigate the right of a judge of the Supreme Court of the territory to exercise his office which had been created by the Organic Act of the territory. See *People of Puerto Rico* v. *Torres*, 28 P. R. R. 783.

Nor can any tenable contention be based upon the legislative powers conferred on the legislature of Puerto Rico by the Organic Act of Puerto Rico.

Section 37 of the Organic Act reads:

"That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act."

It is well settled that the legislature of a state or territory cannot assume jurisdiction of the trial and prosecution of an offense against an Act of Congress, or of an action to recover a penalty for the violation of a penal law enacted by Congress. *People of Puerto Rico* v. *Torres*, *supra*.

It is not questioned that Puerto Rico can legislate with regard to corporations of its own creation, just as it may legislate as to other entities and individuals within its jurisdiction. The Supreme Court in this case failed to distinguish between local statutes controlling corporations and amendments attaching penalties to violations of federal laws.

But this Act goes much further than the territorial acts declared

invalid in the cases above cited. It changes or attempts to change the very nature of the law that it amends and operates upon. By Act No. 33 the legislature of Puerto Rico changes the Joint Resolution No. 23 from an Act addressed to the legislature into an Act directed to corporations. The limitation of the Joint Resolution of Congress is on the powers of the legislature. Act No. 33 converts it into a limitation on the powers of corporations.

The statute attempts to confer jurisdiction to impose penalties for violations of federal laws upon insular courts, and in so doing not only legislates upon a matter not within its legislative domain, but violates the express provisions of federal laws.

Title 28, Section 371, U. S. C. A. provides that:

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive . . .

"Second.—Of all suits for penalties and forfeitures incurred under the laws of the United States."

The penalty here is created by an Act of Puerto Rico, but the law to which it attaches is a law of the United States. If the federal law disappeared, there would be nothing upon which this statute could operate.

In *Puerto Rico v. Shell Co.*, 302 U. S. 253, 271, the court said:

"Finally, it is contended that, if the local anti-trust act and the Sherman Act both stand, a conflict of jurisdiction between the federal courts and the local courts may result. But clearly there is slight, if any, ground for the apprehension. The local act simply confers jurisdiction upon the local courts to enforce that act. *No attempt, of course, is made to confer jurisdiction upon those courts to enforce the Sherman Act, or upon the federal courts to enforce the local act.* It is hard to see why a conflict as to which law shall be enforced and which jurisdiction shall be invoked should ever arise, since the officers charged with the administration and enforcement of both acts are, in the last analysis, under the control of the same sovereignty and, it well may be assumed, will work in harmony." (Italics supplied.)

It is further suggested that:

"While the Organic Act is a quasi Constitution of Porto Rico, it is, as defendants argue, also legislation by Congress, which has reserved complete power to annul the acts of the Porto Rican Legislature, and has not annulled the Water Power Act. This failure to

annul has some, though not controlling, weight. But we are not prepared to adopt the appellants' broad contention that 'the Legislature of Porto Rico is an agent of Congress', and that therefore the 'act has now become in effect an act of Congress itself'. This proposition goes too far. Failure to annul is not the full equivalent of adoption. None of the cases cited and relied upon support the appellants' broad contention as to agency." *Gallardo v. Porto Rico Railway, Light & Power Co., supra*, p. 923. See *Chuoco Tiaco v. Forbes*, 228 U. S. 549, 557, 558; *Porto Rico v. Am. etc. R. Co.* (C. C. A.), 254 F. 369, 377.

The appellant further contends that, since the complaint alleges that the basis of the proceedings set forth in this complaint is founded on a violation of Section 752, Title 48, U. S. C. A., which is the Joint Resolution of Congress No. 23 of May 1, 1900, or on the public policy of the Island as established by the above statutes, the first issue raised before this court is whether the proceedings in the Supreme Court of Puerto Rico are based on a violation of a federal statute and not on a violation of a local act, which is contrary to the decision in the case of *Puerto Rico v. Shell Co., supra*, p. 307; *Gallardo v. Porto Rico Railway, Light & Power Co., supra*.

If the sole basis of the jurisdiction of the Supreme Court in these proceedings is the violation of the federal acts set forth above, the judgment of the Supreme Court can not be sustained for the reasons set forth in the preceding pages.

The only other basis for maintaining these proceedings and referred to in argument before this court is a provision in Act No. 47, *supra*, Sec. 2, which provides, that, if any corporation exercises rights not conferred by law, or performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or any of its statutes, the Attorney General or any district attorney may file a petition in the Supreme Court of Puerto Rico for an information in the nature of *quo warranto*.

Act No. 30, of Puerto Rico approved March 9, 1911, provided in Par. 4 of Sec. 3 that:

"4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: Provided, however, That the power

of any agricultural corporation (The Act of 1902 reads 'any corporation', omitting the word 'agricultural') organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred."

While the complaint contains an allegation as follows, it does not, we think, amount to an allegation that Act 30, Laws of 1911, or any other local law of Puerto Rico had been violated:

"(c) Subdivision (f) of section 4 of the aforesaid articles of incorporation provides, however, that the right of the aforesaid corporation to hold and control land in the Island of Puerto Rico is restricted to 500 acres only, such restrictions being expressly described in conformity with the restrictions established in section 3 of the Joint Resolution of the Congress of the United States of America, approved May 1, 1900 (Joint Resolution No. 23, 56th Congress, First Session, 31 Statutes at Large 716, Code of the United States, Title 48, Section 752).

"(d) The aforesaid domestic corporation was thus authorized to engage in agriculture, was restricted by its articles of incorporation to own and control not more than 500 acres, and was warned by said articles of incorporation that the aforesaid restriction was imposed by law. Yet, notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752), said corporation owns and controls at present in full ownership and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane."

The judgment of the insular Supreme Court was based in part on these allegations; but the appellant contends that the insular Supreme Court had no jurisdiction in this case under Act No. 47, which confers jurisdiction on that tribunal only under certain conditions. The allegation in the information is that the articles of incorporation of the defendant include a prohibition against holding more than five hundred acres of agricultural land, but the articles of incorporation are not a statute of Puerto Rico, but merely set forth the purposes and limitations of a corporation organized under the laws of Puerto Rico.

There is no specific allegation that Act No. 30 of the Puerto Rican legislature enacted in 1911 has been violated. An allega-

tion that a corporation had committed acts *ultra vires* of its articles of incorporation is not made a ground under the Act vesting jurisdiction in *quo warranto* proceedings in the Supreme Court of Puerto Rico to forfeit its charter and condemn its property under Act No. 47, even if Act No. 47 is a valid act.

The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute. Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed. It does not appear, therefore, that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *ultra vires* act in violation of its articles of incorporation, or of a federal law.

Again, the record discloses that the government of Puerto Rico has looked on and has seen this corporation acquire and use 12,188 acres of agricultural land over a period of ten years or more in violation of these Acts, and has assessed and received taxes thereon without raising any question as to the validity of such holdings.

A statute, it is true, is not rendered ineffective by non-use. *Chicago, etc., R. R. Co.* v. *Iowa*, 94 U. S. 155, 162. A failure to enforce a law does not necessarily repeal it. *Louisville & N. R. R. Co.* v. *United States*, 282 U. S. 740, 759. While it may be urged that the insular government may not be prevented from invoking the statutes in a proper case prohibiting the limitation of holdings of agricultural land in excess of 500 acres, we think it should not be permitted to forfeit land for past violations which it has winked at and condoned; and if it confiscates them it must do so under the rules of eminent domain in accordance with the provisions of the second paragraph of Sec. 6 of Act No. 47, Laws of 1935 (Special Session), *supra*, hereinbefore referred to.

Since Act No. 47 is claimed by the defendant to be a void act because it attempted to amend a *federal* statute by adding penalties thereto, see *Auk Bay Salmon Canning Co.* v. *United States*, 300 Fed. 907; *Puerto Rico* v. *Torres*, *supra*, or is void because of this attempted change of a local civil act into a penal federal statute, and the entire Act is therefore rendered void, the issue is whether a valid

complaint can be based thereon for a violation of a part of the Act which it now claims to be valid, if taken by itself, no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act. The real issue in this case, therefore, is not whether a valid complaint could have been made under Act No. 47 but whether one was made, assuming Act No. 47 can be held to be a valid act. It is not whether the Act itself, by the rules for the construction of statutes, can be maintained as a valid act of the Puerto Rican legislature, but whether the complaint in this case sets forth valid grounds for dissolving this corporation through *quo warranto* proceedings authorized under Act No. 47 and the forfeiture of its property and the imposing of heavy fines. No specific charge is made in the complaint of a violation of a Puerto Rican statute, either of Act No. 30 of 1911, or any other local Act. We think, if such was the purpose of the pleader, the allegation is too indefinite to constitute a good charge in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines.

The only other allegation in the complaint is that the public policy of the government of Puerto Rico has been violated, which is not properly charged.

We do not hold that the People of Puerto Rico has no redress as against the holding of so much agricultural land as contrary to valid statutes of Puerto Rico in the event it proceeds according to law, or through the federal government proceeding for a violation of its laws. We think on the record in this case the judgment of the insular Supreme Court in these proceedings must be reversed.

The judgment of the Supreme Court of Puerto Rico is reversed with costs, but without prejudice to future proceedings under valid statutes, or in the federal courts based on a violation of Sec. 39 of the Organic Act, or Sec. 752, Title 48, U. S. C.

PETERS, J. (dissenting). I am unable to concur in the conclusion arrived at by the majority of this court that the Supreme Court of Puerto Rico had no statutory jurisdiction to support the judgment in this proceeding. I do not question the principles of law enunciated in the above opinion, but feel that a somewhat less technical application of them would properly result in sustaining the action of the local court in a field peculiarly its own.

Act No. 47 of the Puerto Rico legislature, approved August 7, 193[illegible] is the particular statute relied upon and referred to by the supreme court, in its order granting leave to file the complaint in the nature of a *quo warranto*, as the basis of its jurisdiction. As I understand the above opinion, Act No. 47 is held to contain the poison of invalidity in that it is supposed to amend a federal statute by providing a penalty for its violation where none existed before. The court considers that Act No. 47 covers matters of legislation within the exclusive jurisdiction of Congress and purports to vest in the insular court jurisdiction reserved exclusively to the courts of the United States.

If Act No. 47 contained nothing but a penalty for a violation of a federal statute, it would be clearly invalid for the reasons and on the authorities stated in the above opinion. Act No. 33 seems to be quite vulnerable in that respect; but Act No. 47 is differently worded and has a different background. It amended the local Act of March 1, 1902, relating to corporations in Puerto Rico and was passed a short time after the approval of Act No. 33 with no reference to it. It is as consistent with the statutory and factual situation, existing at the time of its passage, to hold that the lawmaking body, in the Act of August 7, was legislating wholly in the local field as to consider that it wilfully trespassed upon the federal enclosure. The language of the Act taken altogether supports this view:

". . . whenever any corporation . . . exercises rights, performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes . . .", the people could obtain a remedy through *quo warranto*, etc.

The Organic Act referred to did not directly prohibit corporations from doing anything. It was directed solely to the legislature, and only by the action of that body, following the mandate found in the federal law, were corporations affected. The applicable language of the Organic Act is:

"Every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."

The defendant corporation, accordingly, was by its charter expressly restricted to ownership of five hundred acres. Not only that, but a local statute similarly restricted it and also provided that a corporation should only exercise powers conferred by its charter or articles of association (Act No. 30, approved March 9, 1911).

If the language in Act No. 47, referring to the Organic Act, is to be taken literally and also separated from its context, it would mean that, if a *corporation* violated the injunction laid upon the *legislature* by the Organic Act, the *corporation* would be subject to punishment. But a corporation cannot violate a mandate laid only upon the legislature. It can only violate a prohibition laid upon it by the legislature in accordance with the mandate the legislature has received from Congress; and then the violation would be of a local law effective in a field wholly open to the local legislature. This is the only field presumably intended to be occupied by the local legislature in passing the statute.

It seems to me that in construing the Act words should be supplied to make all the language effective and its meaning both clear and consistent with previous legislation, both federal and local, as follows:

"Whenever any corporation . . . exercises rights, performs acts or makes contracts in violation of [restrictions imposed upon it by the legislature as required by] the express provisions of the Organic Act of Puerto Rico or any of its statutes", the Attorney General may file, etc.

But in any event, it seems to be clear that Act No. 47 contains language, outside of any reference to the Organic Act, and separ-

able from it, being the words "or any of its statutes", etc., which give the supreme court jurisdiction in case of violation of local laws,—and it is only local laws that were violated by the defendant, *i.e.*, the provisions in Act No. 30 of March 9, 1911, prohibiting corporations from holding more land than the original resolution of Congress provided for, and forbidding corporations from exercising corporate powers beyond the limits of their articles of association (Secs. 3 and 4).

This provision could stand as a separate Act by itself.

"The unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions." *Champlin Refining Co. v. Corp. Comm. of Okla. et al.*, 286 U. S. 210, 234. *Texoma Natural Gas Co.* v. *R. R. Com.*, 59 Fed. (2d), 750; *El Paso & N. E. Ry. Co.* v. *Gutierrez*, 215 U. S. 87.

It seems to be recognized that Act No. 47 confers jurisdiction on the Puerto Rico Supreme Court in *quo warranto*, at least, for violation of local law. It cannot be questioned that there was a violation of local law, both in respect of holding more than the permitted number of acres of land and in exercising powers not given by the articles of incorporation.

It is thought, however, that the allegations in the complaint do not describe violations of local law with sufficient definiteness to warrant a judgment against the defendant coporation.

It seems to me, however, in view of the fact that the field of possible violations by the land-holding agricultural corporations is confined to local laws, and that the allegations in the complaint, when put together, state facts and describe a situation which show a violation of such laws, that the judgment of the supreme court should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all, does not differ essentially from any other suit aimed to settle a dispute between the parties.

On the same date, to wit, September 27, 1939, the following Judgment was entered:

JUDGMENT.

September 27, 1939.

This cause came on to be heard April 20, 1939, upon the transcript of record of the Supreme Court of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, September 27, 1939, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is reversed with costs, but without prejudice to future proceedings under valid statutes, or in the federal courts based on a violation of Sec. 39 of the Organic Act, or Sec. 752, Title 48, U. S. C.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit of Appeals for the First Circuit, certify that the printed pages, numbered 1 to 333, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including October 13, 1939, in the cause in said court numbered and entitled,

No. 3417.

RUBERT HERMANOS, INC.,

DEFENDANT, APPELLANT,

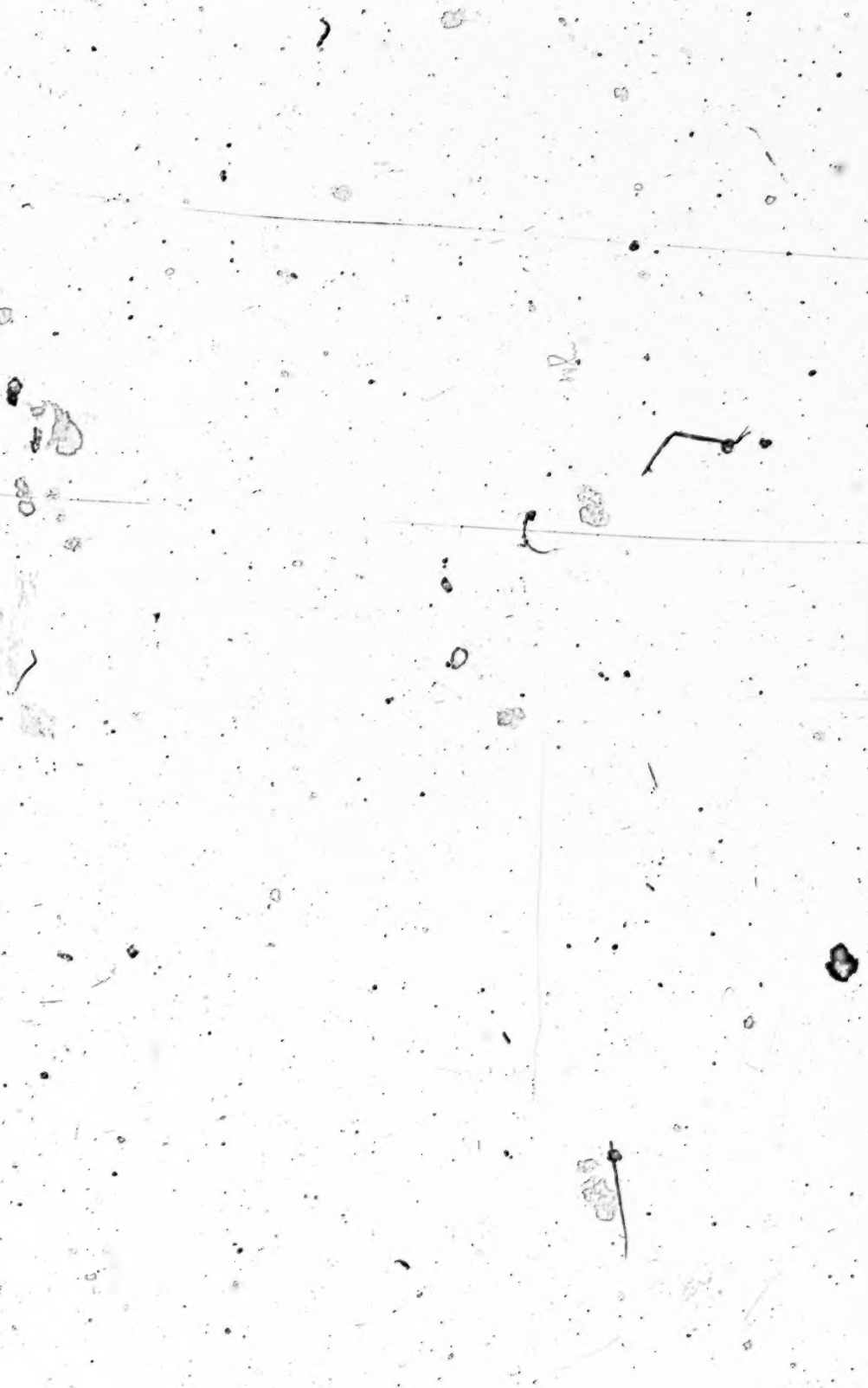
v.

THE PEOPLE OF PUERTO RICO,

PLAINTIFF, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this thirteenth day of October, A. D. 1939.

[SEAL] ARTHUR I. CHARRON, *Clerk.*



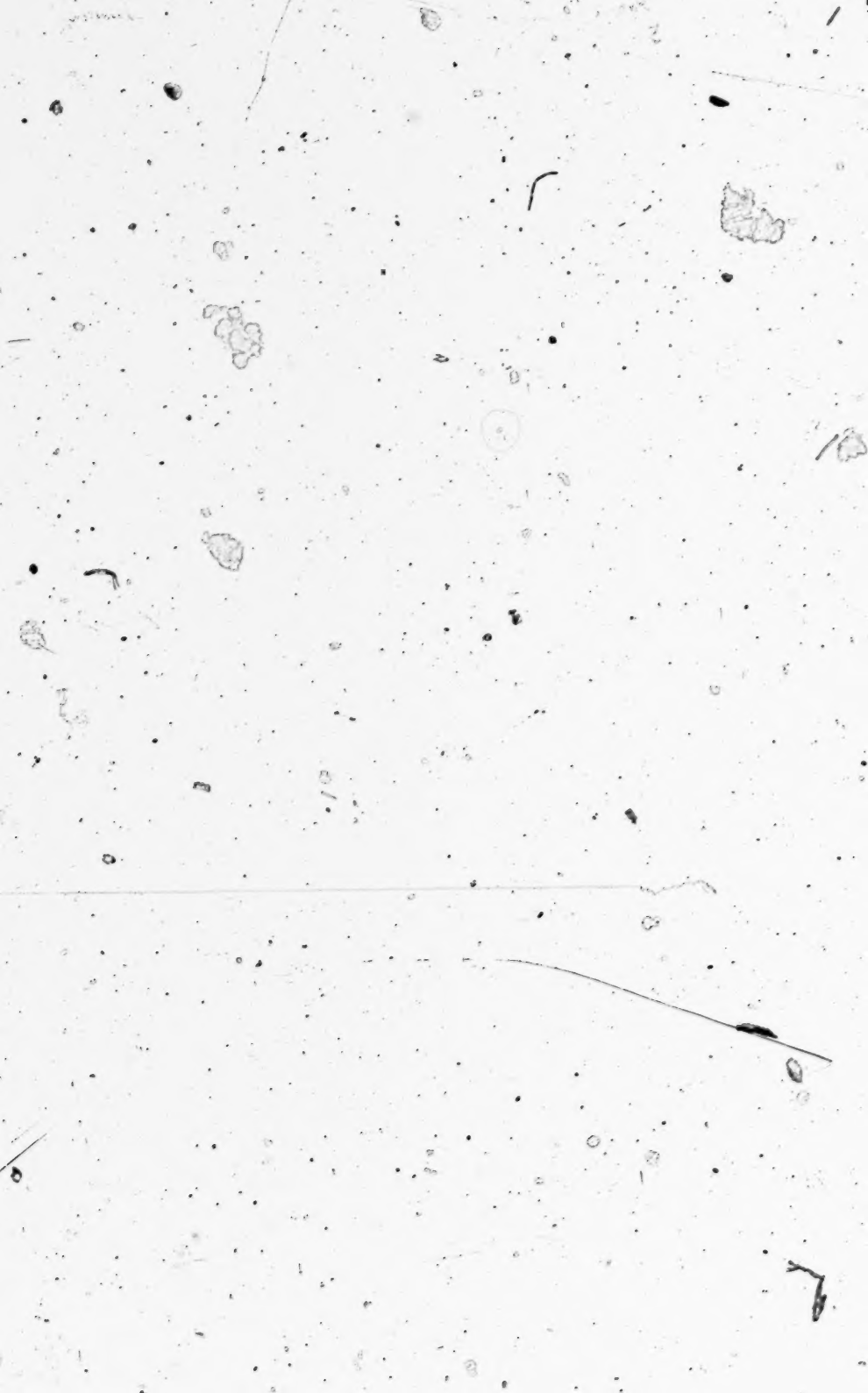
SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 29, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6290)



IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

WILLIAM CATTRON RIGBY,
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Acting Attorney General of Puerto Rico,

MIGUEL GUERRA MONDRAGON,

RAFAEL RIVERA-ZAYAS,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, entered in this cause on September 27, 1939 [106 F. (2d) 754, *Advance Sheets*], reversing (R. 329, 333) the judgment or decree of the Supreme Court of Puerto Rico, "but without prejudice to future proceedings under valid statutes, or in the federal courts based on a violation of Sec. 39 of the Organic Act, or Sec. 752, Title 48, U.S.C."

The decision of the Circuit Court of Appeals was by a divided court. The majority opinion was by JUDGE WILSON, concurred in by JUDGE MAHONEY (R. 315-329). JUDGE PETERS filed a dissenting opinion (R. 330-332).

The judgment of the insular Supreme Court (R. 305-306) in favor of this petitioner, in *quo warranto* proceed-

ings, ordered the forfeiture of the corporate charter and the dissolution and winding up of the business of the respondent Rubert Hermanos, Inc., a domestic agricultural corporation of Puerto Rico, with a statutory fine of $3,000, and costs including attorneys' fees. The judgment was based upon the court's finding that (R. 305):

> "1. • • • the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres."

The *quo warranto* proceedings were begun by original complaint in the insular Supreme Court (R. 1-35) upon the authority of two statutes enacted at the Special Session of the Legislature of Puerto Rico in the year 1935, giving that Court original jurisdiction in such cases. They are Act No. 33, approved July 22, and Act No. 47, approved August 7, of that year. [*Appendix, infra*, pp. 74-76].

STATEMENT

This case primarily involves the power of the Legislature of Puerto Rico to provide for enforcing the so-called "500 acre law" by proceedings in the insular Supreme Court.

FIRST: The Congress, by Joint Resolution No. 23, May 1, 1900 (Appendix, *infra*, p. 65), provided that, in Puerto Rico:

> "Sec. 3. • • • No corporation shall • • • be permitted to hold or own real estate except such as may be

reasonably necessary to enable it to carry out the purpose for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."

The restriction was emphasized and in effect re-enacted in the second paragraph of Section 39 of the present Organic Act for the Island, March 2, 1917 (Appendix, *infra*, p. 67).

SECOND: The insular Legislature ["Legislative Assembly" under the former "Foraker Act"] imported this restriction into its local Corporation Law of March 1, 1902, and into the revision of it, March 9, 1911 (Appendix, *infra*, pp. 70-74), by the *proviso* (Sec. 3, sub-par. 4):

> "*Provided, however*, That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred";

prescribed that the corporation's incidental powers shall be (Sec. 3, sub-par. 8)

> "subject to the restrictions and liabilities contained in this act and in the Civil Code and its articles of incorporation";

and (Sec. 4) that:

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section";

and required (Secs. 6, 7) "articles of incorporation" to be filed, and to state *inter alia* (Sec. 7, sub-par. 4):

"The object or objects for which the corporation is formed."

And by the insular *Quo Warranto* Law of March 1, 1902, Sections 2 and 6 (Appendix, *infra*, p. 68), it was made a ground for *quo warranto*, and for ouster from the corporate franchise, with fine and costs, that

"any corporation * * * exercises rights not conferred by law".

THIRD: Disregard of this 500 acre law becomes notorious. In the present case, the insular Supreme Court finds from the census reports (Opinion, R. 294) that:

"not less than 196,757 acres, or something more than 70 per cent of the total acreage planted to sugar cane, are owned or controlled by companies which in turn are controlled almost exclusively by absentee stockholders",

and that these facts

"constitute the elements of the most intricate problem confronting the people of this Island".

FOURTH: In order to facilitate enforcement of the 500 acre law, the Legislature, at its Special Session in 1935, passed the two statutes, Acts Nos. 33 and 47 [Appendix, *infra*, pp. 74-76], vesting original jurisdiction in the Insular Supreme Court in such cases. These proceedings were brought under those statutes. Act No. 33 confers "exclusive original jurisdiction" in *quo warranto* proceedings in cases of "violations of the provisions of Section 752, Title 48, United States Code" [which is the Joint Resolution No. 23 of May 1, 1900]. Act No. 47 amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902, so as to authorize original proceedings in the insular Supreme Court,

> "whenever any corporation, * * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes."

FIFTH: The present respondent corporation was organized in 1927 under the insular Corporation Law to "engage in agriculture in general" with usual broad powers as a cane growing and sugar manufacturing company, but with the express restriction in Section 4-(f) of its articles of incorporation (Complaint, "Exhibit A", R. 8):

> "*provided, however*, that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States".

Nevertheless, the corporation (Complaint, Par. (d), R. 3; Amended Complaint, R. 45):

> "owns and controls at present in full ownership and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane",

aggregating some 12,188 acres (*ibid*, Par. (e): R. 3, 45).

It is alleged that this is done (Complaint, Par. (d), R. 3; Amended Complaint, R. 45),

> "notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752)",

and also (Par. (f); R. 3-4 and 45-46) in violation of the public policy of Puerto Rico.

The prayer of the complaint is (R. 4-5 and 46-47):

> "to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises."

The "Amended Complaint" (R. 44-47) was filed, with immaterial modifications, upon defendant's "Motion to Strike" certain allegations (R. 36-41).

The corporation demurred to the amended complaint (R. 51-58), and also answered (R. 89-97) substantially admitting the allegations, but denying that they stated a cause of action, challenging the jurisdiction the court, and also setting up that the insular government is estopped, "barred from cancelling the franchise of this corporation", because it has (R. 96-97)

> "tolerated, allowed and encouraged the development of the sugar industry during all these years until it has reached the present stage",

without

> "questioning the right of a sugar corporation to own and control more than five hundred acres, provided this was reasonably necessary in order to obtain the raw material for the purpose of manufacturing and producing sugar and to engage in the sugar industry; that the People of Puerto Rico collected and still collects taxes upon the property."

No questions of fact are involved. At the hearing the corporation offered no evidence. At the close of the People's case, it moved for dismissal on substantially the same grounds stated in its demurrer and answer (R. 121-129). The insular Supreme Court overruled its motion to dismiss (R. 129); and afterwards, in a careful opinion

(R. 285-304) decided the case in favor of the government, upheld the validity of the two statutes, Acts Nos. 33 and 47 vesting original jurisdiction in the court, overruled the corporation's defense of estoppel, and gave judgment of ouster from the corporate franchise, with a $3,000 fine and costs (R. 305).

As stated, the Circuit Court of Appeals reversed, by a divided court (R. 315-333).

QUESTIONS PRESENTED

The case thus presents, primarily, the important question of the power of the Legislature of Puerto Rico to carry into practical effect by insular statutes the purpose of the Congress to limit the land holdings of agricultural corporations in the Island to 500 acres.

The controversy centers chiefly about the validity of the two insular statutes under which these proceedings were instituted; together with a question of the sufficiency of the allegations of the complaint, and of whether the Circuit Court of Appeals should have reversed the decision of the Territorial Supreme Court upon such a question of local pleading or procedure. There is also the other question of whether the *quasi*-sovereign government of Puerto Rico can be deemed to be estopped from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures, particularly where, as here, the insular statutes were enacted in order to carry Congressional statutes and the policy of the Congress into effect.

FIRST. **Is Act No. 33 of the Legislature of Puerto Rico, approved July 22, 1935,[1] a valid statute?** The Supreme Court of

[1] Laws of 1935, Special Session, p. 418; *Appendix, infra*, pp. 74-75.

Puerto Rico considers it valid. The majority opinion of the Circuit Court of Appeals holds it "null and void", as an attempt, in effect, to "amend" or change the character of the federal law by adding penalties and providing for enforcement in the insular courts, or as attempting to change its character from one "*enacted for the only purpose of imposing limitations upon the legislative powers of the legislature*" (R. 322), to a law binding directly on the corporations themselves. Petitioner believes the statute valid.

SECOND. **Is Act No. 47 of the Legislature of Puerto Rico, approved August 7, 1935,[2] amending Sections 2 and 6 of the insular *Quo Warranto* Law of March 1, 1902, a valid statute?** The insular Supreme Court considers it valid. The majority of the Circuit Court of Appeals hold it invalid, for like reasons as Act No. 33, at least in so far as it confers original jurisdiction on the Supreme Court of Puerto Rico in *quo warranto* proceedings brought against a domestic corporation of the Island on the ground that it has exercised rights or performed acts or made contracts "in violation of the express provisions of the Organic Act of Puerto Rico"; and also express doubt [*but do not directly decide;* R. 328-329] as to whether the balance of the Act is valid, conferring original jurisdiction upon the insular Supreme Court in such *quo warranto* proceedings based upon *violations of local insular statutes;* "no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act" (*Majority Opinion*, R. 329). JUDGE PETERS considers the statute valid, at least insofar as it relates to violations of insular statutes. (*Dissenting Opinion*, R. 330-332). Petitioner believes it valid; and also believes that, in any event, so much of the Act is valid as confers upon the insular Supreme Court original jurisdiction in such *quo warranto* proceedings when *based*

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[2] Laws of 1935, Special Session, pp. 530-536; *Appendix, infra*, pp. 75-76.

upon violations of INSULAR *statutes*, which is enough to sustain the jurisdiction in these proceedings.

THIRD. **Should the decision of the insular Supreme Court, treating the allegations of the complaint as sufficiently definite allegations of violations of insular statutes, have been disturbed by the Circuit Court of Appeals, or the insular court's judgment reversed, on such a question of local pleading and procedure, in view of the established rule of the respect to be accorded to a decision of a Territorial Supreme Court construing and applying local Territorial laws and rules of pleading and procedure?**

The complaint alleges facts from which the conclusion of violation of insular statutes necessarily follows; although perhaps not specifically alleging that legal conclusion, in so many words. The insular Supreme Court treated it as sufficient in this respect, and, in part, based its findings and judgment upon these allegations. The majority opinion of the Circuit Court of Appeals holds "the allegation is too indefinite to constitute a good charge in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines" (R. 329). JUDGE PETERS, to the contrary, says (*Dissenting Opinion*, R. 332):

> "It seems to me, however, in view of the fact that the field of possible violations by the land-holding agricultural corporations is confined to local laws, and that the allegations in the complaint, when put together, state facts and describe a situation which show a violation of such laws, that the judgment of the Supreme Court should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all, does not differ essentially from any other suit aimed to settle a dispute between the parties".

Petitioner believes that JUDGE PETERS is right; that the allegations are sufficient in this respect, under the Code of Civil Procedure of Puerto Rico; and that, in any event, the judgment of the Territorial Supreme Court was not

so "clearly erroneous" as to justify reversal on such a question of local pleading or procedure.

FOURTH. **Should the *quasi*-sovereign government of Puerto Rico be deemed to be estopped from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures; particularly, where, as here, the insular statutes were enacted in order to carry Congressional statutes and the policy of the Congress into effect?**

The insular Supreme Court holds that the insular government cannot be estopped on any such ground (R. 301-304). The majority of the Circuit Court of Appeals, to the contrary, hold (R. 328) that the insular government "should not be permitted to forfeit land [3] for past violations which it has winked at and condoned". JUDGE PETERS' dissenting opinion (R. 330-332) does not specifically deal with this question. Petitioner believes the insular Supreme Court right; that the government cannot be thus estopped; and that the majority judges of the Circuit Court of Appeals were perhaps led into error by failing to notice that no land forfeiture is involved in this case at all; that none was asked in the complaint, and none adjudged by the insular court; and that there is here a case of present continuing violations,—not simply of "past violations".

OPINION OF THE CIRCUIT COURT OF APPEALS

The principal grounds of the majority decision, as well as those of JUDGE PETERS' dissent, are indicated under the

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[3] Although there is no prayer "to forfeit land" anywhere in the complaint (R. 2-5, 46-47), nor any land forfeiture adjudged by the insular court (*Judgment*, R. 305). Nothing of that kind at all. The only "forfeiture" sought or adjudged is simply of the corporate franchise,—of its license to be a corporation.

headings "Questions Presented" (*ante*, pp. 7-10), and "Petitioner's Position" (*infra*, pp. 11-16).

OPINION OF THE INSULAR SUPREME COURT

The opinion of the Supreme Court of Puerto Rico, delivered by MR. JUSTICE TRAVIESO on July 30, 1938 [53 P.R. Dec. 779; *Spanish edition*], is on pages 285 to 304 of the record.

STATUTES

The pertinent provisions of the two insular statutes whose validity is here directly involved, Acts Nos. 33 and 47 of the Legislature of Puerto Rico of the Special Session of 1935, are in the Appendix (*infra*, pp. 74-76).

Other pertinent Constitutional and statutory provisions, federal and insular, are likewise in the Appendix (*infra*, pp. 63-78).

PETITIONER'S POSITION

Petitioner believes the Supreme Court of Puerto Rico was right, substantially for the reasons stated in its opinion; that the majority judges of the Circuit Court of Appeals were wrong in reversing it; that the dissenting opinion of JUDGE PETERS is right in the main [except in so far as it indicates doubt of the validity of Act No. 33, and except as it apparently treats the restrictions of the Congressional Joint Resolution and of Section 39 of the Organic Act as binding only on the Legislature, and not also directly on the corporations themselves]; that the judgment of the Circuit Court of Appeals should be reversed; and that of the Supreme Court of Puerto Rico affirmed. Petitioner's position may be summarized as follows:

FIRST. Joint Resolution No. 23 of the Congress, May 1, 1900, restricting corporations engaged in agriculture in Puerto Rico to the ownership and control of not to exceed

500 acres of land, emphasized and in effect re-enacted by Section 39 of the present Organic Act of 1917, is an effective expression of the public policy of the United States; and, as an act of the Congress, the "supreme legislature" for the Territories, is a part of the domestic "supreme Law of the Land" of Puerto Rico, and likewise a part of the public policy of Puerto Rico. As such, it is a direct limitation, not only upon the legislative powers of the insular Legislature in chartering corporations or in making provision for their incorporation, but also upon the powers of the corporations themselves; and is directly applicable to them.

SECOND. Insular Acts Nos. 33 and 47 of the Special Session of the Legislature of 1935 are both valid. They were validly enacted by the Legislature in the exercise of the general local legislative powers with which the Congress had endowed it by the Organic Act. They were properly enacted for the purpose of carrying into effect the express direction of the Congress that no agricultural corporation in the Island should ever be "permitted" to hold or own real estate except such as might be reasonably necessary to carry out the purposes for which it was created, with the accompanying express restriction on its authorized purposes to the ownership and control of not to exceed 500 acres of land.

THIRD. The power of the Territorial Legislature as the delegate or agent of the Congress to enact local laws [not in conflict with any Congressional legislation] to supplement the Act of the Congress, and to provide means for carrying the Congressional will into effect by proceedings in the local insular courts, is clear. The contrary decision of the majority of the Circuit Court of Appeals is in conflict with the applicable decision of this Court in *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 260 *et seq.* Accordingly, these Acts Nos. 33 and 47 conferring original jurisdiction on the insular Su-

preme Court in *quo warranto* proceedings based upon violations of such Act of Congress, as well as upon,—or wholly upon, — violations of corresponding insular statutes, such as the local Corporation Act of 1902 as revised in 1911, and the local *quo warranto* Act of 1902, as amended by this Act No. 47 of 1935, are valid enactments of the Legislature.

FOURTH. Consequently, the insular Supreme Court had jurisdiction of this proceeding.

FIFTH. The provision of the local corporation act of Puerto Rico of 1902, both as it originally stood and as revised in 1911 and still in force (sub-paragraph 4 of Section 3), prescribing that the power of any agricultural corporation organized under that Act

> "to hold real estate shall be subject to the prohibition contained in Section 3 of the Joint Resolution of the Congress of the United States of May 1, 1900",

was a valid and effective *adoption by reference* of that provision of the Act of Congress *as a part of the local law of Puerto Rico*, "the details of which, instead of being recited, are adopted by reference" [*confer People of Puerto Rico vs. Shell Co., supra*, 302 U. S. 253, 266]; as were likewise also the corresponding provisions of Section 2 of the *quo warranto* Act, as amended by this Act No. 47 of 1935, concerning acts of corporations "*in violation of the express provisions of the Organic Act of Puerto Rico*," and those of Act No. 33 concerning "*violations of the provisions of Section 752, Title 48, United States Code.*"

SIXTH. The Circuit Court of Appeals majority was in error: (1) In holding that the Supreme Court of Puerto Rico "is a statutory court and its jurisdiction is defined by statute", instead of a court of superior general jurisdiction, as in reality it is; (2) In considering the

Joint Resolution of the Congress of May 1, 1900, together with the second paragraph of Section 39 of the present Organic Act, solely as limitations upon the legislative powers of the Legislature of Puerto Rico in chartering corporations, instead of, as those enactments of the Congress clearly are, parts of the body of the "supreme Law of the Land" in Puerto Rico, directly binding, not only upon the insular Legislature, but likewise equally upon all other branches of the insular government, and upon the corporations themselves, as well as upon all citizens of the Island; (3) In considering these Acts Nos. 33 and 47 enacted for the purpose of carrying the Congressional will and policy into effect, as attempts by the Legislature to "amend" the Acts of Congress, and therefore, as invalid; (4) In considering Section 256 of the Judicial Code of the United States [28 U. S. Code 371], relating to the delimitation of jurisdiction as between the courts of the United States, and the courts of the sovereign States of the Union, as a limitation upon the power of the Legislature of Puerto Rico in this respect [*over-looking* the decisions of this court that all of the courts in the Island, alike the so-called "insular courts", as well also as the so-called "District Court of the United States for Puerto Rico", are in reality all simply Congressional courts, all alike instituted by the Organic Act (Secs. 40 and 41), and all alike, and equally, "courts of the United States", and none of them constitutional courts under Article III of the Constitution, — the so-called "federal" court any more than the so-called "insular" courts [*Romeu* vs. *Todd*, 206 U. S. 358, 368; *Balzac* vs. *Porto Rico*, 258 U.S. 298, 312; *Mookini* vs. *United States*, 303 U. S. 201, 205]; (5) In this connection in its reference to "a *forfeiture of the property* of a corporation", overlooking the fact that NO FORFEITURE OF THE PROPERTY of this corporation was asked in the complaint, or included in the judgment of the insular court in this case, other than of its franchise to be a corporation.

SEVENTH. Likewise it erred further: (6) In failing to hold that, in any event, so much of Act No. 47 is valid as vests the Supreme Court of Puerto Rico with original jurisdiction in *quo warranto* proceedings against a corporation, based upon its violation of *local insular statutes* [regardless of any question of the validity of that portion of the Act relating to cases charging violation of the Organic Act[4]], and is complete in itself, and can stand alone as an independent statute; and (7) In holding that the insular Supreme Court has not been vested with jurisdiction in cases of "an *ultra vires* act" of a corporation "in violation of its articles of incorporation", "or of a federal law".

EIGHTH: Likewise it erred: (8) In holding the allegations of the complaint in this case "too indefinite to constitute a good charge" of this corporation's violation of insular statutes [the insular corporation law and the insular *quo warranto* law]; and (9) In overruling the decision of the insular Territorial Supreme Court on this question of local law and local procedure [the local Supreme Court having treated the allegations as sufficient under the local Code of Civil Procedure]. The dissenting opinion of JUDGE PETERS was clearly right on this point. The majority opinion is in conflict with the applicable decision of this court in *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511, and the many earlier decisions there cited, as to the respect to be accorded to decisions of the local Territorial courts of last resort interpreting and applying local statutes and local rules of pleading and procedure.

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[4] And in this connection over-looked the rule as to the separability of statutes, established by the decisions of this court in *Champlin Refining Co.* vs. *Commission*, 286 U. S. 210, 234-235; *El Paso & N. E. Ry. Co.* vs. *Gutierrez*, 215 U. S. 87, 96-97; and earlier cases.

NINTH: It is likewise in error and is in conflict with, or misinterprets and misapplies, the applicable decisions of this court in *Chicago etc. R.R. Co.* vs. *Iowa,* 94 U. S. 155, 162, and in *Louisville & Nashville R.R. Co.* vs. *United States,* 282 U. S. 740, 759, and is in conflict with the decisions of other Circuit Courts of Appeals, that of the Second Circuit in *Seeley* vs. *Helvering,* 77 F. (2d) 323, 324, and that of the Sixth Circuit in *Standard Oil Co.* vs. *Fitzgerald,* 86 F. (2d) 799, 802, as well as with the decisions of the courts of last resort of several of the States of the Union, in holding (R. 328) that the insular Government of Puerto Rico can be deemed estopped from enforcing its statutes limiting the land holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures; that the insular Government

> "should not be permitted to forfeit land for past violations which it has winked at and condoned";

and is further again in error in this connection in failing to notice that [as hereinbefore pointed out] there is no question of forfeiture of land involved in this case; that none was asked in the complaint, and none was adjudged.

REASONS FOR GRANTING THE WRIT.

This case presents a question of federal law of fundamental and surpassing importance to the Government and the people of Puerto Rico, which has not been, and it is believed should be, settled by this court. **Does the Legislature of Puerto Rico possess the power to supplement by local statutes, and to provide for carrying into effect and for enforcing by proceedings in its local insular courts, the federal acts expressing the purpose and the policy of the Congress to prevent great concentrations of agricultural land in the Island by forbidding agricultural corporations from holding or controlling more than 500 acres?**

Wide-spread violation is notorious; and, as the insular Supreme Court said (R. 294-295; *ante,* p. 4), gives

rise to "the most intricate problem confronting the people of this island." "And * * * the existence of large land-holdings in a small agricultural country, abnormally over-populated and without basic industries other than those required for the preparation of agricultural products for the market, is contrary to the economic welfare of its people." As that court pointed out (*Opinion*; R. 294):

> "The wisdom and foresight of the sponsors of the insular agrarian policy embodied in the above mentioned federal legislation, has been demonstrated by the subsequent events. Puerto Rico, whose density of population in 1900 attracted the attention of Congress, has since then almost doubled the number of its inhabitants, the census of 1935 taken by the Puerto Rican Reconstruction Administration, a federal agency, showing that the Island had on that date a population of 1,723,534 inhabitants or an average of 501 persons per square mile; that 72.3 percent of said population live in the rural zone and depend entirely on agricultural activities for their subsistence; that the Island has an average of something less than one acre of tillable land per rural inhabitant; that there are 251,000 acres, that is one-fifth of all the lands adapted to agriculture, used for the production of sugar cane; that not less than 196,757 acres, or something more than 70 percent of the total acreage planted to sugar cane, are owned or controlled by companies which in turn are controlled almost exclusively by absentee stockholders; that the companies so organized and controlled produce, normally, 59 percent of the total sugar output of the Island, thus controlling almost 40 percent of the total insular agricultural wealth, and that during the decade from 1920 to 1930 the combined acreage of all the rural estates managed by their owners was decreased by 318,232 acres, while the total acreage operated under strange management was increased by about 325,425 acres."

This case presents a direct conflict of opinion between the Supreme Court of Puerto Rico, with whom JUDGE

PETERS in his dissenting opinion in the Court of Appeals is in agreement, in the main, on the one hand, and, on the other hand, the majority opinion of JUDGES WILSON and MAHONEY, upon which the judgment of the insular Court was reversed.

The majority opinion is in conflict with, or overlooks, applicable decisions of this Court on controlling questions here, as hereinbefore stated ["Petitioner's Position" *ante*, pp. 12-16]; and is likewise, on at least one of the important questions [estoppel of the government to enforce its laws], in conflict with decisions of other Circuit Courts of Appeal, as well as courts of last resort of several of the States [*ante*, p. 16, and *infra*, pp. 59-60].

Basically important questions are here presented of the powers of the Legislature of Puerto Rico; of the validity of the two insular statutes here directly involved; of the importance of enforcing the rule established by this Court of the respect to be paid to decisions of a local Territorial Supreme Court, such as that of Puerto Rico, interpreting local statutes and local rules of pleading and procedure [in this instance, the sufficiency under the local Code of allegations of violation of the insular statutes]; and of whether the Territorial government can be deemed to be estopped, because of delay or lack of action by former insular executive officials or former Legislatures, from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, particularly in view of the enactment of those statutes in order to carry Congressional statutes and the policy of the Congress into effect.

Wherefore it is respectfully requested that this petition for a writ of certiorari be granted.

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BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The Opinion of the Supreme Court of Puerto Rico (R. 285-304) is officially reported in 53 P. R. Dec. 779 (*Spanish edition, Advance Sheets*). It has not yet appeared in the English edition of the Puerto Rico Reports. The opinion of the Circuit Court of Appeals (*Majority opinion*, R. 315-329; *dissenting opinion of* JUDGE PETERS, R. 330-332) is reported in 106 F. (2d) 754 (*Advance Sheets*).

JURISDICTION

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered September 27, 1939 (R. 333).

QUESTIONS PRESENTED

The questions presented are stated in the Petition (*ante*, pp. 7-10).

STATUTES INVOLVED

These are indicated in the Petition (*ante*, p. 11) and pertinent parts are set out in the Appendix (*infra*, pp. 63-78).

STATEMENT

A statement of the case is in the Petition (*ante*, pp. 2-7).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Questions Presented" and "Petitioner's Position" in the Petition (*ante*, pp. 7-10 and pp. 11-16).

SUMMARY OF ARGUMENT

The argument is summarized under the heading "Petitioner's Position" in the Petition (*ante*, pp. 11-16), and in the "Subject-Index" preceding the Petition (*ante*, pp. i-vi).

ARGUMENT.

FIRST

ACT NO. 33 AND ACT NO. 47 OF THE SPECIAL SESSION OF 1935 OF THE LEGISLATURE OF PUERTO RICO ARE BOTH VALID STATUTES.

Point I.

The Legislature of Puerto Rico is vested by the Organic Act with "all local legislative powers", to "extend to all matters of a legislative character not locally inapplicable", including power "to * * * * alter, amend, modify or repeal any and all laws and ordinances of every character now in force in Puerto Rico insofar as such alteration, amendment, modification or repeal may be consistent with the provisions of this Act" (Organic Act, Secs. 25 and 37; Appendix, *infra*, pp. 66-67), save only as restricted by other acts of the Congress.

Point II.

This comprehensive grant of "all local legislative powers" confers upon the legislature of Puerto Rico substantially all of the local legislative powers customarily exercised by the legislatures of the States. (*People of Puerto Rico* v. *Shell Company*, 302 U. S. 253, 260-261.)

> "These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, * * * the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; * * * **'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'.** * * * This court, speaking of this typical general provision * * * said that, with the exceptions noted in the provision itself, **'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State'".** (*People of Puerto Rico* v. *Shell Co.*, *supra*, 302 U. S., at pp. 260-261; *emphasis supplied*).

A. The Congressional grant of "all local legislative powers" extends to all "rightful subjects of legislation", the general scope of which is to be determined

> "by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represent" (*People of Puerto Rico* v. *Shell Co., supra*, at p. 261; citing and quoting *Maynard* v. *Hill*, 125 U. S. 190, 204).

Point III.

This broad grant by the Congress to the Puerto Rican Legislature of "all local legislative powers" is limited only by such explicit limitations as are expressed in the Organic Act itself or in other acts of the Congress.

A. *There is no implied limitation against legislation in the same field in which the Congress has chosen to legislate directly*, so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court has expressly so held in the *Shell Company* case. The Court there said (*People of Puerto Rico* v. *Shell Co., supra*, 302 U. S. 253, 263):

> "3. In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act, which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences

likely to ensue from the duplicate exercise of it which requires an implication to that effect."

B. This rule is *equally applicable whether* the Congressional legislation in the same field be contained in *the Organic Act* itself [or in an act, such as the Joint Resolution No. 23 of the Congress of May 1, 1900 (Appendix, *infra*, p. 65), manifestly quite directly related to the Organic Act and intended, in effect, to operate as a part of it], *or in some other act of the Congress* "not locally inapplicable" within the meaning of section 9 of the Organic Act (Appendix, *infra*, p. 66), and therefore having, as directed in that section, "the same force and effect in Puerto Rico as in the United States."

C. *There is no difference, as to their effect and operation in the Island, and their complete effectiveness there for all purposes, between provisions of the Organic Act and those contained in any other act of the Congress running to the Island.* All alike are enacted by the Congress, exercising "plenary" legislative power in the Territory (*El Paso & N. E. Ry. Co.* vs. *Gutierrez, supra*, 215 U. S. 87, 94-95, 97), in pursuance of its constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Const., Art. IV, Sec. 3, cl. 2); and, like every act of the Congress, wherever operative at all, they are all alike "Laws of the United States", and, as such, "the supreme Law of the Land" (Const., Art. VI, Cl. 2).

D. There is no express limitation against insular legislation supplementing or implementing acts of the Congress, enacting penalties, or providing remedies in the insular courts; and no such limitation is to be implied.

There is no suggestion of any such limitation being intended in the rule as it was laid down by this Court in the *Shell Company* case as above quoted. There is in

that case an express finding (302 U. S. at p. 259), that the federal anti-trust acts extend to Puerto Rico and are in full force there. Nevertheless, it was there held (overruling the decisions both of the Circuit Court of Appeals and of the Supreme Court of Puerto Rico) that the manifest fact that the local anti-trust law enacted by the Legislature of Puerto Rico was legislation "in the same field", in which the Congress had itself directly legislated by the federal acts, did not invalidate the local Puerto Rican statute; *although that statute expressly provided remedies in the local insular courts for its violation in cases which would also constitute violations of the federal anti-trust statutes* [of violations of which the Congress had there expressly directed cognizance to be taken by the federal courts; Sherman Act, Sec. 4; Clayton Act, Secs. 4, 15, 16].

E. *The decision of this Court is broad and sweeping in this respect.* Under it, no distinction can be made as to whether the Congress, in choosing to legislate in this particular "field of legislation", has chosen to do so in the Organic Act or other closely related legislation, or in a separate act operative within Puerto Rico. All alike constitute Congressional legislation operative within the Island as "the supreme Law of the Land"; and, with relation to all alike, the rule declared by this Court is operative that (in the absence of express Congressional direction to the contrary) no implied limitation is intended by the Congress, by the mere fact that it has chosen itself to legislate in that same field, upon the broad and unlimited powers which by the Organic Act it has chosen to confer upon the insular Legislature, of "all local legislative powers" [so long, only, as the insular legislation *does not conflict* with any Act of Congress]. As MR. JUSTICE SUTHERLAND well phrased it in the opinion of this Court above quoted, and as quoted in the opinion of the insular Supreme Court in the present case (302 U. S. at p. 261; *quoted by the insular court*, R. 299):

"The power being given without express limitation, a conclusion that the present exercise of the power is precluded by the existence of Section 3 of the Sherman Act" [*or by the existence of any federal act in the same field of legislation in question in any particular case, such as this Joint Resolution of May 1, 1900, with which we are here immediately concerned*] "must rest upon the assumption that a congressional statute penalizing specific local behavior and a statute of Puerto Rico to the same effect cannot coexist. With due regard to the status of the territory, the character of its established government, the positive terms of the congressional grant of power, and the lack of conflict between the two acts, that assumption must be rejected."

F. This rule is, of course, equally applicable with relation to the provisions of section 3 of Joint Resolution No. 23 of the Congress, of May 1, 1900, limiting land tenure in the Island by corporations "authorized to engage in agriculture", "to the ownership and control of not to exceed 500 acres of land", as it is to the restrictive provisions of the federal anti-trust acts, the Sherman Act and the Clayton Act, which, under the decision of this Court in the *Shell Company* case, are operative in Puerto Rico [302 U. S., *supra*, at pp. 257-259] equally with the provisions of this Joint Resolution No. 23. Just as, with relation to the federal anti-trust acts operative in the Island, so also with relation to this Joint Resolution No. 23 likewise operative there, it is competent for the local legislature, in the exercise of the broad and unrestrictive grant of "all local legislative powers" conferred upon it by the Congress, to supplement, and to implement, the federal statutes by enacting suitable penalties and providing the procedural means for their enforcement, so long as the local legislation does not conflict with the federal legislation.

G. And so it may to that end "*adopt by reference*" the

federal act, "the details of which, instead of being recited, are adopted by reference" [*People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. at p. 266], and make it the basis of proceedings under its own local statutes, in its own insular courts. (*Confer, infra*, Point VI, pp. 32-35.)

H. Of course, insofar as any local legislation might be found to be in direct conflict with federal legislation, the local legislation would have to fall; would be simply void, as in conflict with "the supreme Law of the Land", "the Laws of the United States", enacted by the Congress and operative in the Island.

I. But the fact that the local legislation provides remedies in the insular courts does not in itself constitute any conflict with the federal legislation.

This was expressly ruled in the *Shell Company* case, where it was said (302 U. S. *supra*, at pp. 262-263):

> "This comprehensive grant of legislative power by Congress plainly recognizes the great desirability of devolving upon the local government the responsibility of searching out local offenses and prosecuting them in the local tribunals. The insular Supreme Court in this case declared in emphatic terms the wisdom of such local control in respect of the matter dealt with by the act in question. Although striking down, with evident reluctance, the act as invalid, that court said: 'The right of the Insular Legislature and officers to prosecute and punish such monopolies as may be set up within our jurisdiction is really inestimable. It was so understood by our Legislature when it took upon itself to legislate on the subject. This is a wholesome and necessary legislation that should be enforced through the insular courts. It must be admitted that The People of Puerto Rico has a special interest in prosecuting before the courts those citizens who violate its own laws. No matter how interested the National Government may be in prosecuting such offenses, instances might occur where the latter would pass unnoticed by the federal officers, or where, for some reason or other, such officers

might not display the same activity and interest that is to be expected from the local officials.'

"3. In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest." * * * * (*Confer, ante,* Point III-A, pp. 22-23.)

J. **A real "*conflict*"** between the federal and the Territorial statutes, in the sense we are here considering, **would involve some *conflict of duties*** imposed upon the corporation by the two laws.

Neither this Court nor the Congress has ever intimated that it considered the mere implementing of the federal act by the insular statute as creating any "conflict" between them. "Conflict" in this sense has always been some substantial, substantive thing *relating to the rights or duties or liabilities of the citizen.* This Court has defined such a real "conflict", in its opinion in *Gulf, Colorado & Santa Fe Ry. Co.* vs. *Hefley,* 158 U. S. 98, 103:

> "The question is * * * *whether their enforcement may expose a party to a conflict of duty.* It is enough that the two statutes operating upon the same subject matter *prescribe different rules.* In such case one must yield, and that one is the State law." (*Italics supplied.*)

That is the test. It is not a procedural matter; but is one of substantive law; of the rights and duties and liabilities of the citizen.

K. It follows that this insular legislation does not amount to "amending" or attempting to "amend" the Act of Congress; and that the majority of the Circuit Court of Appeals were in error in thinking that it does (R. 321, 322 *et seq.*). The cases they cite do not bear out

their opinion. [*Territory of Nebraska* vs. *Lockwood*, 3 Wall. 236; *Auk Bay Salmon Canning Co.* vs. *United States*, 300 Fed. 907; *Gallardo* vs. *Porto Rico Railway, Light & Power Co.* (C.C.A.-I), 18 F. (2d) 918; *People of Puerto Rico* vs. *Torres*, 28 P. R. Rep. 783]. So far as in point here at all, those cases hold only that [*of course*] the Territorial legislature may not change or really "amend" any act of the Congress; and, hence, that any statute of the Territorial legislature actually *in conflict* with an act of Congress is ineffective and void, in so far as it is in conflict with the federal statute. No one disputes this.

L. The question in every case is simply whether or not the Territorial statute actually is in conflict with the act of Congress. In the present case there is no conflict. Under the rules established by this court in *Gulf Colorado & Santa Fe Ry. Co.* vs. *Hefley*, above quoted, and in the *Shell Co.* case, *supra*, the fact that the local statute provides means for carrying the federal act into effect, in the local courts, does not constitute any conflict with the federal act. To the exact contrary, in the present case, the local statute was in reality, and very plainly, enacted in direct obedience to the Congressional will, and to carry the Congressional intent into effect.

Point IV

The Supreme Court of Puerto Rico is a "court of the United States."

A. The majority opinion of the Circuit Court of Appeals says (R. 325) that this insular Act No. 33, in conferring "jurisdiction to impose penalties for violations of federal laws upon insular courts", "violates the express provisions of federal laws"; and cites the provision of Section 256 of the Judicial Code (28 U. S. Code, 371) that:

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: * * *

"Second:—Of all suits for penalties and forfeitures incurred under the laws of the United States."

B. *But that overlooks three things:*

FIRST. Section 256 of the Judicial Code constitutes a delimitation or demarkation of the line of jurisdiction between the "*courts of the United States*" on the one hand and the "*courts of the several States*" on the other hand; that is to say, between the courts instituted by the different sovereignties; the "courts of the United States" instituted under the sovereign power of the federal government, on the one hand; and, on the the other hand, the "courts of the several States" instituted by the several sovereign States of the Union under their inherent sovereign powers, wholly independently in this respect of the sovereign powers of the federal government.

That has nothing whatever to do with any delimitation, as among themselves, of the respective powers of the different courts instituted by the Congress within a Territory such as Puerto Rico, all of which alike derive their powers from the Congress, and all of which alike act by the authority of the same sovereignty, that of the federal government of the United States. *Grafton* vs. *United States*, 206 U. S. 333, 354-355; *People of Puerto Rico* vs. *Shell Co.; supra*, 302 U. S. 253, 264-266.

SECOND. The Congress has itself recently defined the term **"courts of the United States"** as including (Sec. 5, Act of August 24, 1937, 50 Stat. 751, 753):

"the courts of record of Alaska, Hawaii, and **Puerto Rico**, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United

States, any circuit court of appeals, and the Supreme Court of the United States".

While that definition of the term "courts of the United States" is prefaced in Section 5 of the Act of August 24, 1937, with the phrase, "As used in this Act", yet it is, manifestly, *a correct definition of the term for all purposes*. It includes all those courts of record which are instituted under the direct sovereignty of the federal government, alike in the continent and in the organized Territories of Alaska, Hawaii and Puerto Rico.

It appears to be directly applicable here, as indicating the sense in which the Congress used the same term, "courts of the United States", in Section 256 of the Judicial Code; and thus reinforces the intent manifest on the face of that section, as above pointed out, to use the term there, simply as in contradistinction to the term "courts of the several States," that is to say, the courts of the several sovereign States of the Union instituted under their independent sovereignties; and not at all with reference to any distinction between the different classes of "courts of the United States" instituted by the Congress within a Territory, such as Puerto Rico, as among themselves.

THIRD: **Within the meaning of this phrase** "courts of the United States", as used by the Congress both in Section 256 of the Judicial Code and also in Section 5 of the Act of August 24, 1937, **the insular courts of Puerto Rico, including the insular Supreme Court of Puerto Rico, are "courts of the United States"**, just as much as is the so-called "District Court of the United States for Puerto Rico", and in exactly the same sense.

They are all alike instituted by the Congress, and by the same Act [the Organic Act for Puerto Rico of March 2, 1917, Secs. 40 and 41, continuing the analogous provisions of the earlier "Foraker Act", Secs. 33, 34]. This court has consistently held that the so-called "District

Court of the United States for Puerto Rico'' is not a constitutional court of the United States, but is only a Congressional court, in reality simply another type of insular court, instituted by the Congress, equally with the other insular courts, under Article IV, Sec. 3, clause 2 of the Constitution, giving the Congress power ''to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States''. *Romeu* vs. *Todd*, 206 U. S. 358, 368; *Balzac* vs. *Porto Rico*, 258 U. S. 298, 312.[5] In the latter case this court said (at p. 312):

> ''The resemblance of its jurisdiction to that of true United States courts in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court.''

C. It follows, therefore that, since the insular Supreme Court of Puerto Rico is a "court of the United States" instituted under the direct sovereignty of the federal government, and is as much a ''court of the United States'' as is the so-called ''federal court'', the ''District Court of the United States for Puerto Rico'', or any other court sitting within the boundaries of the Territory, *the Legislature of Puerto Rico*, instituted by the same sovereignty and clothed by it with ''all local legislative powers,'' *could validly vest that court with jurisdiction in cases of violation of these federal laws* named in these insular jurisdictional statutes, Acts Nos. 33 and 47 of 1935. [Even aside from the ''adoption by reference'' of the federal statute as a part of the local insular law; *Point VI, infra*, pp. 32-35].

Point V

In the present case it is clear that the Joint Resolution of the Congress No. 23, approved May 1, 1900, limiting to five hundred

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[5] And see likewise, as to Hawaii: *Mookini* vs. *United States*, 303 U. S. 201, 205.

acres the amount of land in Puerto Rico which might be owned or controlled by a corporation engaged in agriculture, and requiring that limitation to be expressed in the articles of incorporation or charter of every such corporation, is an expression of the public policy of the United States, and of the intent of the Congress that it should become a fixed rule of property in the Island, and a part of the basic law of the land there.

And hence a fixed rule of public policy in the Island.

The insular Supreme Court made a study (R. 291-297) of the historical facts surrounding the enactment of the Joint Resolution No. 23 of the Congress, of May 1, 1900, and of its emphatic restatement in Section 39 of the present Organic Act of March 2, 1917; of the statements of Congressional leaders of both parties in the course of the debates leading up to the enactment of the "Foraker Act" of April 12, 1900 (c. 191, 31 Stat., 977) and of the Joint Resolution here in question, passed only eighteen days later, May 1, 1900; and of various acts of the Legislature of Puerto Rico and earlier decisions of the insular Supreme Court itself, and reports of the Governor, and of a report of the Secretary of the Interior of the United States, and also of various statistical data relating to the Island, all tending to indicate a general understanding over this whole period of time of the public policy embodied in the Congressional legislation, and that it was a part of the fixed public policy of Puerto Rico.

We particularly invite attention to this portion of the insular court's opinion.

Point VI

The Legislature of Puerto Rico possesses the power to adopt by reference a statute of the Congress as a part of the local statutes of Puerto Rico, without repeating the details of the federal statute at length.

A. *And contrary-wise*, as this court pointed out in the *Shell Company* case, *supra*, the Congress may, and not

infrequently has, adopted by reference State or Territorial statutes as parts of the body of the federal statutory law, without reciting the details at length. This court, in the *Shell Co.* case, in construing and applying its earlier decision in the *Grafton* case [*Grafton* vs. *United States*, 206 U. S. 333], and in pointing out the applicability of the doctrine of that case to Puerto Rico, said (*People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 265-266):

> "An attempt is made to distinguish the *Grafton* case on the ground that but one statute was there involved—namely, the statute of the Philippine Islands—and that both the general court martial and the Philippine court undertook to enforce that statute. Obviously, that view is incorrect. The court-martial proceeding was not to enforce the Philippine legislation, but to enforce the 62nd Article of War; and that article was none the less a federal law, distinct from the local law, because it might be necessary to refer to the local law to determine whether the act charged against the soldier was embraced by the term 'crimes' in the 62nd Article. This is well illustrated by section 289 of the Criminal Code (18 U. S. C. Section 468), which, in respect of offenses committed upon places subject to the exclusive jurisdiction of the United States within the limits of a state or organized territory or district, makes applicable the laws of such state, territory or district in respect of such offenses. Prosecutions under that section, however, are not to enforce the laws of the state, territory or district, but to enforce the federal law, the details of which, instead of being recited, are adopted by reference. See *United States* v. *Press Publishing Co.*, 219 U. S. 1".

B. The 62nd Article of War [Rev. Stat., Sec. 1342, Art. 62; now reenacted, with some changes, as the 96th Article; Act of June 4, 1920, c. 227, subchapter II, section 1, 41 Stat., at p. 806; 10 U. S. Code 1568] read, as it stood at the date of the decision in the *Grafton case*, in 1907:

"Art. 62. **All crimes** not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war **are to be taken cognizance of by a** general, or a regimental, garrison, or field-officers' **court-martial,** according to the nature and degree of the offence, and punished at the discretion of such court." (*Emphasis supplied.*)

The words "*all crimes*" are the words that this Court held in the *Shell Co.* case, as above quoted, "*adopted by reference*" the laws of the various States and Territories in force when and wherever the offense might have been committed, of which the court-martial was called upon to take cognizance in any particular case.

C. As this court pointed out in the *Shell Co.* case, as above quoted (302 U. S. at pp. 265-266), as well as in *United States* v. *Press Publishing Co.*, 219 U. S. 1, 8, there cited, the Congress has similarly, by Section 289 of the Criminal Code, adopted by reference the varying laws of different States and Territories, without reciting them in detail, for application, *pro tanto*, as parts of the federal Criminal Code itself, within the respective federal reservations lying inside of the outer territorial boundaries of the several States and Territories.

D. Again, the Congress similarly, over a century ago, when making provision for the District of Columbia, adopted by reference the common law and rules of procedure of the State of Maryland, as then existing, for that portion of the District which had been ceded by that State; and similarly adopted the then existing laws and rules of procedure of the State of Virginia for that portion of the District ceded by that State; in each case without reciting the details at length. [Act of February 27, 1801, c. 15, 2 Stat. 103].

E. And so likewise the Congress, in the first Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900, set the example for the Legislature of Puerto Rico

in this respect. In that Act, the Congress, as hereinafter more at length pointed out (*infra*, Point IX, pp. 38-39), in defining the jurisdiction and prescribing the forms of procedure of all the various courts of the Island, did so by merely *adopting by reference* the General Orders of the Military Governor of the Island, then in force, *without copying them out at all* (Sec. 33, "Foraker Act", Appendix, *infra*, pp. 63-64).

F. There appears to be no reason why the Legislature of Puerto Rico, in the exercise of the delegation to it by the Congress by Sections 25 and 37 of the Organic Act of "all local legislative powers", may not, in this respect, legislate in like manner as the Congress itself; or may not thus,—without having necessarily always to set out the details in full,—*adopt by reference*, and thereby make a part of its own statutory local law, any act of the Congress which is already of its own force in effect in the Island as a part of the body of the "supreme Law of the Land" there. [As every enactment of the Congress, applicable in the Island, necessarily is, under Article IV, Section 3, Clause 2 of the Constitution]. The Act of Congress being already in force in the Island, there would seem to be no reason why the Legislature should not simply refer to it and adopt it by reference as a part of its own statute, without necessarily reciting it in full, or formally reenacting it at length; just as the Congress itself does in adopting by reference existing statutes of the States and Territories.

G. Particularly would this seem to be true in view of the fact that the Acts of Congress thus adopted by reference by the Legislature are, as pointed out in the *Grafton* case and the *Shell Co.* case (*Grafton* v. *United States*, *supra*, 206 U. S. 333, 354-355; *People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. 253, 264-266) *enactments of the same sovereignty* under which the Legislature itself acts.

Point VII

The Legislature has effectually adopted the "500 acre law" as a part of the local statutory law of Puerto Rico.

A. The Legislature may validly "adopt by reference" any part of the federal statutes already in force in the Island, as a part of the local statute. [Point VI, *ante*, pp. 32-35]. The Congressional Joint Resolution of May 1, 1900, and the Organic Act, were both directly applicable to the Island, and were in force there from the dates of their enactment by the Congress.

B. So much of Section 3 of the Joint Resolution (Appendix, *infra*, p. 65) as prohibits agricultural corporations from being authorized or permitted to own or control land in the Island, in excess of 500 acres, was specifically adopted by the Legislature as a part of the local statutes by subparagraph 4 of Section 3 of the Corporation Law of 1902, and by the revision of it March 9, 1911 (Appendix, *infra*, p. 71; *ante*, p. 3), by the provision that:

> "Sec. 3. Every corporation has power.
> "1. To have succession * * *.
> "4. To acquire and to hold * * * * *Provided, however*, **That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.**"

C. This adoption was long before the date, April 21, 1927 (*Complaint*, R. 2, 44), when this respondent was organized under the local "Corporation Law" of Puerto Rico, and in compliance with it, embodied that 500 acre restriction in its own Articles of Incorporation.

D. This *adoption by reference* of Section 3 of the Congressional Joint Resolution as a part of the body of the local statutes is equally applicable to the second paragraph of Section 39 of the Organic Act of 1917 for the

Island; which, in so far as we are here concerned, is in effect simply a re-enactment and emphasizing of the Joint Resolution of 1900.

E. Since [insofar as this question is concerned] *the phraseology in which the Legislature expresses its will is immaterial*, so long as its intent is clear, it follows that it is really immaterial whether the Legislature first formally adopts the section of the federal act as a part of the local statute, and then formally proceeds to base its further local legislation upon the section thus formally adopted, or, by a short cut, without that formality, simply bases its local legislation upon a portion of the federal statutes already in force in the Island. The effect is the same, either way. It amounts to the adoption, *pro tanto*, of the federal statute "by reference". If the intent of the Legislature is clear, there would seem to be no objection to the short cut.

F. It follows that,—even aside from the earlier direct adoption of the Congressional Joint Resolution by the provisions of Section 3 of the local Corporation Act, as above pointed out,—the action of the Legislature in Acts Nos. 33 and 47 of 1935 in taking the short cut, and thus directly basing jurisdiction of the insular Supreme Court upon violations of these federal statutes then in force in the Island, was perfectly valid; and amounted, in effect, to an adoption by reference of those provisions of the federal statutes as parts of the local statutory law.

G. It follows that those statutes are valid.

H. And hence that the insular Supreme Court had jurisdiction of this proceeding.

SECOND

THESE STATUTES ARE APPLICABLE TO THIS CORPORATION.

Point VIII

Among the powers necessarily implied in the grant of "all local legislative powers" to the insular Legislature, in accordance with the universal understanding and the universal prac-

tice of State legislatures, **are the powers to charter private corporations, and to provide for their incorporation by general corporation laws; to provide what their charters or articles of incorporation shall contain; what property they may hold or own or use; what powers** may be given to them under their articles of incorporation, or they may exercise, **and with what limitations; to prescribe the procedural means for confining them within the exercise of their charter powers,** and the penalties for violations of the limitations of their charters, and for *ultra vires* acts; to provide for their dissolution and the winding up of their businesses and the distribution of their properties; and in general to make regulations concerning them, of every kind.

These are all well recognized legislative powers universally exercised by the legislatures of the States.

Point IX

Likewise, among the legislative powers habitually exercised by the legislatures of the States, are the powers (subject to whatever general provisions may be made in the local State constitution) **to prescribe the forms of action and modes of procedure in the courts, and to change them from time to time.**

A. In accordance with this usual custom, the Congress, both in the former Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900 (Sec. 33; Appendix, *infra*, pp. 63-64), and likewise in the present Organic Act, the "Jones Law" of March 2, 1917 (Sec. 40, Appendix, *infra*, p. 67), gave broad powers in this respect to the former "Legislative Assembly" as well as to the present "Legislature" of Puerto Rico. By section 33 of the "Foraker Act", "the courts and tribunals of Porto Rico as already established" [by the Orders of General Davis, the military Governor for the United States] "and now in operation", including the insular Supreme Court and the district courts [*Cf. General Orders of Brig. Gen. Davis, Military Governor*, Appendix.

infra, pp. 64-65] were continued, with the provision that the Chief Justice and Associate Justices of the insular Supreme Court and its Marshal should thereafter be appointed by the President, by and with the advice and consent of the Senate of the United States, and that the Legislative Assembly, besides being empowered to direct how the other officials and attachés of the courts should be chosen,

> "shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attachés for each, **their jurisdiction, their procedure,** and all other matters affecting them." (*Emphasis supplied*)

B. And by Section 40 of the present Organic Act of March 2, 1917, the courts, as existing at that date, with their jurisdiction and forms of procedure, are likewise continued, with the similar provision (*Appendix, infra*, p. 67) that

> "the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico".

Point X

Pursuant to the legislative powers thus conferred upon it, both the general powers and the specific powers with relation to the courts and their jurisdiction and forms of procedure, **the former Legislative Assembly of Puerto Rico enacted a general corporation law, March 1, 1902** (Laws of 1902, pp. 73-76; Rev. Stats. and Codes of 1902, Civil Code, Title II, Sec. 32, *et seq.*, pp. 759-796), **and revised it by Act No. 30 of March 9, 1911** (Laws of 1911, pp. 87 *et seq.*; Comp. of Rev. Stats. and Codes, 1911, Pars. 407-491; Appendix, *infra*, pp. 70-74).

And likewise, it enacted "An Act Establishing '*Quo Warranto*' Proceedings", March 1, 1902 (Laws of 1902, pp. 67-68; Rev. Stats. and Codes of 1902, Pars. 779-787, pp. 282-284; Rev. Stats. and Codes, 1911, Pars. 1319-1327; Appendix, *infra*, pp. 68-69).

A. By the corporation law, as revised by Act No. 30, *supra*, of March 9, 1911 "An Act To establish a Law of private corporations" [*long before the organization in 1927 of the corporation which is the respondent here*], provision was made for the organization of private "domestic corporations", for their articles of incorporation and other matters relating to them, including their powers, the duration of the corporate existence, and their dissolution. Sections 3 and 4 of that Act, relating to their corporate powers (Par. 409, Comp. of Rev. Stats. and Codes, 1911; Appendix, *infra*, pp. 71-72; *ante*, pp. 3, 37 provides:

> **"Sec. 3. Every corporation has power:**
>
> 1. To have succession • • •
>
> 4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: ***Provided, however,* That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.**[6]
>
> 5. To appoint the officers and agents • • • •
>
> 7. **To dissolve,** either voluntarily or **by operation of law** and in accordance with the provisions of this act.

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[6] The Legislature here "*adopts by reference*" Section 3 of the Congressional Joint Resolution as a part of the local statutes of Puerto Rico. *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 266 [*Confer, ante*, Point III-G, pp. 25-26, and Point VII-B, pp. 36-37].

8. To possess and exercise, **subject to the restrictions and liabilities contained in this act and in the Civil Code and its articles of incorporation** such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: ***Provided*, That the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this act** and of the Civil Code."

"**Sec. 4. No corporation** formed under this act shall be deemed to possess or **shall exercise corporate powers except in accordance with the preceding section.**" (*Emphasis supplied*)

B. By sections 2 and 6 of the *"Quo Warranto" law of* March 1, 1902, it was provided (Appendix, *infra*, p. 69):

"Section 2.—**That in case * * * any corporation** does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or ***exercises rights not conferred by law;*** The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of 'Quo Warranto' * * *

"Section 6.—In case any person or corporation against whom any such petition is filed, or" [is] "adjudged guilty, **the court may give judgment of ouster against such person or corporation from the office or is [its] franchise,** and fine such person or corporation for * * * unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: * * *" (*Emphasis supplied*)

Point XI

A.—With those insular statutes in force (both the corporation law and the "*quo warranto*" law), the defendant-respondent corporation was organized as a "domestic corporation" under the laws of Puerto Rico, on April 21, 1927, and in section 4 of its

"Articles of Incorporation" (R. 6-8) it provided, in the statement of its corporate powers, in accordance with the limitation on the corporate powers of domestic agricultural corporations of Puerto Rico, contained in sub-paragraph 4 of section 3 of the local insular corporation law of March 9, 1911, as above quoted [as well as in accordance with the requirement and limitation contained in section 3 of Joint Resolution No. 23 of the Congress of May 1, 1900, *supra*], that **the "aims and purpose for which this corporation is organized"** are, among other things (*Complaint, "Exhibit A,"* R. 6-8):

> (c) To build up, * * * *, and manage undertakings whose purpose and object is the planting, cultivation and harvesting of sugar cane and the manufacture and sale of sugar, * * * *.
>
> (d) To raise, develop, purchase, own, and sell cattle, sheep and horses. **To engage in agriculture in general.** To plant, cultivate and harvest sugar crops, * * *
>
> (f) To purchase, lease, own, * * * estates and plantations located within or without the Island of Puerto Rico * * *; **provided, however, that the rights of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America.** (*Emphasis supplied.*)

That was the statement of the incorporators themselves. These articles became a part of the corporation's contract with the government.

B. **Nevertheless, the defendant-respondent corporation, in direct violation of the restriction contained in the last above quoted *proviso* in subparagraph "(f)" of section 4 of its own Articles of Incorporation,** thus voluntarily adopted by it in accordance with the laws and requirements both of the insular Corporation Law enacted by the Legislature of Puerto Rico and also of section 3 of the Joint Resolution of the Congress of May 1, 1900, **proceeded to purchase and to cultivate**

"in agriculture" an acreage of land in Puerto Rico very far in excess of 500 acres.

C. **Neither the answer** (R. 89-98), nor anything said in any of defendant's motions, or elsewhere, before the insular Supreme Court, **nothing whatever in the case,—indicates any purpose, or attempt, on the part of this corporation to divest itself of any portion of the land** it holds and uses for agricultural purposes, in excess of 500 acres, in violation of its own Articles of Incorporation; nor to discontinue its use for agriculture.[7] To the contrary, **its manifest purpose is to continue to hold all of this great tract of land,** and to continue to use it for agriculture, as hitherto, in direct violation of its own Articles of Incorporation, as well as of the local corporation law of Puerto Rico, and also of the Joint Resolution of the Congress of May 1, 1900.

D. **In this respect this defendant-respondent corporation puts itself into substantially the same position, and attitude, taken by the Pullman Company** in the great *quo warranto* case in the Supreme Court of Illinois, in which that court entered its decree, back in 1898, compelling the Pullman Company to divest itself of the ownership and control of the town or city of Pullman, Illinois, with all of the residences, schools, churches and municipal facilities which the Company had built and owned and maintained [and paid taxes upon] for many years for the residences and convenience of its own employees, but in doing which, as the court there held, it had exceeded the corporate powers granted to it by its own Articles of Incorporation under the laws of the State of Illinois.

The Illinois Supreme Court there said, in the course of a long and careful opinion (*People* v. *Pullman Palace Car Co.*, 175 Ill. 125, 163-165):

"In the case at bar the appellee is conceded to be

[7] Defendant-respondent introduced no evidence at the trial, but contented itself with a motion to dismiss, at the conclusion of the plaintiff's case (*ante*, p. 6; R. 121-129).

a corporation *de jure*, and the complaint is that it had assumed and exercised, and is assuming and exercising, powers not granted by its charter or implied by law. We find from its pleas the corporation is without lawful authority to perform the acts complained of; that it entered upon the performance of such acts in 1880 or 1881, in pursuance of a fully matured plan; that it has since continuously engaged in this unjustifiable undertaking, and was so engaged when this information was filed, and that it owns a tract of land * * * . ***The usurpations of the corporation are not only those of the past but also those of the present, and its plea admits it contemplates a repetition of the offenses in the future.***

"Our interpretation of the law, as applied to facts * * * , is, that the appellee corporation, at and before the time of filing the information, was exercising powers and performing acts not authorized either by the express grant of the charter or any implication of law; and further, that by some of such unauthorized acts * * * tend * * * to remove real estate from the operation of our Statute of Descent and place the title thereto in a corporation having perpetual succession and unending existence, and thereby withdraw it from the channel of trade and commerce; to create monopolies * * * , and that its acts are opposed to good public policy. **We do not think the demand of the sovereign that usurpations so clearly antagonistic to good public policy shall be restrained can be defeated by any imputation of *laches*, or upon the ground that acquiescence is to be inferred from the failure to invoke the aid of the courts at an early day."** (*Emphasis supplied.*)

THIRD

IN ANY EVENT SO MUCH OF ACT NO. 47 IS VALID AS VESTS ORIGINAL JURISDICTION IN THE SUPREME COURT OF PUERTO RICO IN CASES OF CORPORATE VIOLATIONS OF INSULAR STATUTES.

Point XII

Act No. 47 vests the Supreme Court of Puerto Rico with original jurisdiction in *quo warranto* proceedings brought in the name of The People of Puerto Rico in cases of corporate violations of the *insular statutes*,

"whenever any corporation * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico *or of any of its statutes*". (Appendix, *infra*, p. 75).

A. The latter provision thus vesting original jurisdiction in the insular Supreme Court in the case of a corporation's violation "OF ANY OF ITS STATUTES",—that is to say, in case of the violation of any of the *insular statutes* of Puerto Rico,—is wholly independent of the other provision, with which it is coupled in the statute as above quoted, vesting jurisdiction in cases of violations of "the Organic Act of Puerto Rico". *They are two entirely separate grants of jurisdiction.* Although frequently, as in the present case, the same act of a corporation,—as, here, the holding and devoting to agricultural purposes of a tract of land vastly in excess of 500 acres,—may be at the same time at once a violation both of the insular statutes and also of the Organic Act, nevertheless there are here two separate and distinct grants of jurisdiction; the one in cases of violation of the Organic Act, and the other in cases of violation of the insular statutes.

B. The grant of jurisdiction in cases of violation of insular statutes is complete in itself, wholly independently of the other grant. This is manifest on the face of the statute; and was, in effect, recognized in the majority opinion of the Circuit Court of Appeals (R. 326)[8].

C. This provision vesting jurisdiction in cases of violation of insular statutes is complete in itself, and can

[8] Where the majority opinion refers to it as

"a provision in Act No. 47, *supra*, Sec. 2, which provides, that, if any corporation exercises rights not conferred by law, or performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or any of its statutes, the Attorney General or any district attorney may file a petition in the Supreme Court of Puerto Rico for an information in the nature of *quo warranto*."

stand independently of the coordinate provision vesting jurisdiction in cases of violation of the Organic Act.

The majority opinion of the Circuit Court of Appeals raises a doubt on this point [*but does not decide it*]. It says (R. 328-329):

> "Since Act No. 47 is claimed by the defendant to be a void act because it attempted to amend a *federal*[9] statute * * *, and the entire Act is therefore rendered void, the issue is whether a valid complaint can be based thereon for a violation of a part of the Act which it now claims to be valid, if taken by itself, no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act. The real issue in this case, therefore, is not whether a valid complaint could have been made under Act No. 47 but whether one was made, assuming Act No. 47 can be held to be a valid act."

D. There is no sound basis for any doubt of the validity of this part of this statute. As JUDGE PETERS points out in his dissenting opinion (R. 332), this provision of Act No. 47 could stand as a separate act by itself, under the established rule of this court as stated in the cases which JUDGE PETERS there cites. *Champlin Refining Co.* vs. *Corporation Commission of Oklahoma*, et al., 286 U. S. 210, 234; *El Paso & N. E. Ry. Co.* vs. *Gutierrez*, 215 U. S. 87, 96-97; as well as earlier cases. *Connolly* vs. *Union Sewer Pipe Co.*, 184 U. S. 540, 565; *Pollock* vs. *Farmers Loan & Trust Co.*, 158 U. S. 601, 635; *Reagan* vs. *Farmers Loan & Trust Co.*, 154 U. S. 362, 395-396; *Field* vs. *Clark*, 143 U. S. 649, 695-696.

The rule, as stated by this court in the *Champlin Refining Co.* case (286 U. S. at p. 234), is:

> "The unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions. *Unless it is evident that the legislature would not have enacted those provisions*

[9] Italics are the court's.

> *which are within its power,* independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." (*Italics supplied*)

E. Judge Peters correctly said (*Dissenting opinion,* R. 332, *supra*):

> "It seems to be recognized that Act No. 47 confers jurisdiction on the Puerto Rico Supreme Court in *quo warranto,* at least, for violation of local law. It cannot be questioned that there was a violation of local law, both in respect of holding more than the permitted number of acres of land and in exercising powers not given by the articles of incorporation."

F. There is no suggestion in the majority opinion of any belief that the Legislature of Puerto Rico "would not have enacted those provisions which are within its power",—*those vesting jurisdiction in cases of violation of insular statutes,*—"independently of" the balance of the statute vesting jurisdiction in cases of violation of "the Organic Act", even if the Legislature had realized that there was any possible question about the validity of the balance of the act. To the contrary, there appears to be no possible reason to doubt that the legislators would have gone ahead and enacted the provisions vesting jurisdiction in cases of violation of *insular statutes,* independently, if any possible doubt had then been suggested to them of their power to enact the balance of the statute. The majority opinion itself finds (R. 318) the purpose of the Legislature:

> "that the legislature of Puerto Rico enacted several statutes, the common purpose of which was to provide the necessary remedial measures for curbing existing land monopolies and preventing further violations of the provisions of Sec. 3 of the Joint Resolution No. 23 of the Congress and Sec. 39 of the Organic Act approved March 2, 1917".

With this purpose in mind, can it be doubted that the Legislature, if it had realized that there could be any

doubt about its power to vest jurisdiction in the insular Supreme Court by that part of this statute, Act No. 47, which vests such jurisdiction in cases of corporate violations "of the express provisions of the Organic Act of Puerto Rico", would nevertheless surely have proceeded to enact, independently, that portion of the statute which vests jurisdiction in cases of violations of insular statutes, "*of any of its statutes*",—by means of which the same legislative purpose of "curbing existing land monopolies and preventing further violations" of the Joint Resolution of the Congress and of Section 39 of the Organic Act could be effected, since every violation of the act of Congress by any agricultural corporation in the Island by holding more than 500 acres of land is likewise necessarily also a violation of the insular corporation law requiring that restriction to be placed in its Articles of Incorporation and forbidding the exercise of any powers not authorized by the Articles.

F. It follows that this portion of Act No. 47 [*and independently of any possible question as to the balance of the statute*],[10] is valid. **In and of itself alone, this constitutes a sufficient basis for the jurisdiction of the insular Supreme Court in this case.**

FOURTH

ACT NO. 47 AMPLY VESTS THE INSULAR SUPREME COURT WITH JURISDICTION, NOT ONLY OF THE PROCEEDINGS IN THIS CASE, BUT ALSO TO MAKE THE FINDINGS AND TO ENTER THE JUDGMENT APPEARING IN THE RECORD.

POINT XIII.

The majority opinion in the Circuit Court of Appeals is clearly in error on this point.

A. The majority opinion in the Circuit Court of Appeals says (R. 328):

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[10] Of course, petitioner, the Government of Puerto Rico, believes the entire Act valid [*Ante*, "FIRST," Points I-VII, pp. 21-37].

> "The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute. Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed. It does not appear, therefore, that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *ultra vires* act in violation of its articles of incorporation, or of a federal law."

In this, the majority opinion is clearly in error.

B. In the first place, the opinion is in error in saying, as above quoted, that: "The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute"; and also in saying: "Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed".

C. If by these statements it is meant to imply that the insular Supreme Court is a court of limited jurisdiction, or of jurisdiction dependent on statutory definition or limitation, like many inferior courts, then the statement is erroneous. The Congress has not placed any such limitation upon the jurisdiction of the Supreme Court of Puerto Rico. **It is a superior court of general jurisdiction.** As already pointed out (Point IX, *ante*, pp. 38-39) the first Organic Act for the Island, the "Foraker Act" of April 12, 1900 [Sec. 33; Appendix, *infra*, pp. 63-64], vested "the judicial power" "in the courts and tribunals of Porto Rico as already established and now in operation * * * under and by virtue of General Orders No. 118, as promulgated by Brigadier-General Davis, United States Volunteers, August 16, 1899". Those courts included the **"Supreme Court of Justice"** constituted by General Orders No. 118, paragraph 2, as "a Judicial Bench for all civil and criminal business" (Appendix, *infra*, pp. 64-65), without any further definition or limitation upon its jurisdiction. The Con-

gress, in thus continuing the existing courts by the "Foraker Act" of April 12, 1900, further provided [*Proviso* to Sec. 33, *supra*; Appendix, *infra*, p. 64] that the "legislative assembly" "shall have authority to legislate from time to time as it may see fit with respect to said courts, * * * their jurisdiction, their procedure, and all other matters affecting them". And the present Organic Act of March 2, 1917, for Puerto Rico, in its turn continues the same courts, including the Supreme Court, by its provision (Appendix, *infra*, p. 67);

> "Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That * * * the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

D. *Likewise the further above quoted statement* in the majority opinion (R. 328, *supra*) that: "It does not appear", "that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *ultra vires* act in violation of its articles of incorporation, or of a federal law", *is clearly erroneous.*

(1) In so far as this statement relates to "an *ultra vires* act *in violation of its articles of incorporation*", it has no appositeness in this case, *unless* it is intended to be applicable to the particular kind of "*ultra vires* act" alleged in the complaint and here before the court. The particular kind of "*ultra vires* act" alleged in the present case (R. 2-3, 44-45) and found by the insular Supreme

Court (R. 304, 305; *ante*, p. 2), is that a domestic agricultural corporation of Puerto Rico, expressly limited by its articles of incorporation to the ownership and control of not to exceed 500 acres of land, in direct defiance of that restriction contained in its own articles, as well as of the restrictive requirements both of the local statutes and also of the federal law in compliance with both of which its articles were adopted, is holding a great tract of land vastly in excess of 500 acres, and devoting it to agriculture, "to the planting, cultivation, and harvesting of sugar cane". The complaint alleges these facts. The insular court has found them [the words "ultra vires" do not appear in the complaint, nor in the insular court's findings or judgment]. The local *quo warranto* law, from its first enactment in 1902 (Appendix, *infra*, pp. 68-69; Secs. 2, 6) contained the provision exposing any corporation which "exercises rights not conferred by law" to ouster from its franchise and to be fined in *quo warranto* proceedings.

(2) And Section 2 of that *quo warranto* law of 1902, as now amended by this Act No. 47 of 1935, expressly vests the Supreme Court of Puerto Rico with original jurisdiction in all such cases, "whenever any corporation • • • exercises rights, performs acts, or makes contracts in violation • • • of any of its statutes" [the local statutes of Puerto Rico].

(3) How then, can the majority opinion of the Circuit Court of Appeals properly say, as above quoted (R. 328, *supra*) that, "It does not appear" that the Supreme Court of Puerto Rico "has been given power to declare a forfeiture of the property[11] of the corporation and to im-

[11] It is to be remembered, again, that no forfeiture "*of the property*" is involved in this case; but only of the corporate franchise,—of the right to continue as a corporation.

pose heavy fines thereon" "for an *ultra vires* act in violation of its articles of incorporation",—*at least for the particular kind* of *ultra vires* act alleged, and found by the insular Supreme Court, in the present case; that is to say the kind of *ultra vires* act which amounts to a direct violation and defiance of the insular statutes [as well as of the federal law]?

(4) Likewise, so far as relates to "an *ultra vires* act in violation * * * of a federal law", what is said in the preceding subparagraphs is equally applicable, *mutatis mutandis*.

FIFTH

THE ALLEGATIONS OF THE COMPLAINT OF VIOLATION OF INSULAR STATUTES WERE SUFFICIENT; AND IN ANY EVENT THE JUDGMENT OF THE SUPREME COURT OF PUERTO RICO SHOULD NOT HAVE BEEN REVERSED ON SUCH A QUESTION OF LOCAL PLEADING OR PROCEDURE.

Point XIV.

The allegations of the complaint are sufficient, under the local Code of Civil Procedure of Puerto Rico, to charge violation of the insular statutes, and to give the insular Supreme Court jurisdiction on that ground.

A. The majority opinion in the Circuit Court erroneously holds them insufficient. It says (R. 329):

> "The real issue in this case, therefore, is * * * * whether the complaint in this case sets forth valid grounds for dissolving this corporation through *quo warranto* proceedings authorized under Act No. 47 *and the forfeiture of its property*[12] and the imposing of heavy fines. *No specific charge is made in the complaint of a violation of a Puerto Rican statute*, either of Act No. 30 of 1911, or any other local Act. We think, if such was the purpose of the pleader, *the allegation is too indefinite to constitute a good charge*

[12] *Confer* foot-note 3, *ante*, p. 10, and foot-note 11, *ante*, p. 51.

> in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines." (*Italics supplied*)

B. But the complaint contains a complete "*statement of the facts constituting the cause of action*".[13] It is clearly sufficient under the local Code of Civil Procedure of Puerto Rico [Secs. 103, 122, 132, 191; Appendix, *infra*, pp. 76-78], and under the established procedure and prior rulings of the insular Supreme Court, to constitute a good charge of violation of the local "Corporation Law", and to sustain these *quo warranto* proceedings.

It states the facts: The corporation's organization for agricultural purposes under the local Corporation Law; that its articles of incorporation contain the required prohibition [*enjoined by the local Corporation Law, as well as by the federal Joint Resolution*] against holding more than 500 acres of land [setting the articles out in full in "Exhibit A" to the complaint, R. 5-14]; that nevertheless it owns, and "applies" to agriculture, lands far in excess of 500 acres, amounting to some 12,188 acres. The relief prayed is (R. 4-5; 46-47)

> "to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises."

C. *While there is no specific allegation of the legal conclusion* of violation of the local Corporation Law under which the corporation was organized; and no specific reference to the *Quo Warranto* Law authorizing these proceedings; yet the complaint *does allege all the facts*

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[13] Puerto Rico Code of Civil Procedure, Sec. 103, subpar. 2; Appendix, *infra*, p. 77.

necessary to demonstrate violation, and to constitute the basis for these *quo warranto* proceedings.[14]

D. **These allegations are sufficient under the local Code of Civil Procedure of Puerto Rico.** Under that Code, it is not necessary to allege the legal conclusion that the actions set out in the complaint amount to a violation of the insular statutes, or of which particular insular statute, such as the local Corporation Law. Under that code, it is sufficient to allege the facts. The necessary legal conclusions may be drawn by the court.

E. The code provides[15] (Appendix, *infra*, pp. 76-78):

"Section 103.—(426 Cal.) The complaint must contain:

"1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

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[14] And it alleges also (R. 3-4, 45-46) that this violation and the ownership of this great tract of land, is in violation of the public policy of the People of Puerto Rico established and reiterated, among other things, by the enactment of these two statutes, Acts Nos. 33 and 47 of 1935, vesting original jurisdiction in cases of such violation in the Supreme Court of Puerto Rico.

[15] Code of Civil Procedure, Act of March 10, 1904 [Rev. Stats. and Codes of Puerto Rico, 1911, Pars. 4985-5406], as revised and re-published with the statutory "Rules for the Printing of the Code", under Act No. 6 of March 31, 1933, Laws of 1933, pp. 194-196, as the present "Code of Civil Procedure, Edition of 1933".

The "Rules" provide, *inter alia*:

"Rule 1.—Each section of the Code of Civil Procedure shall carry in parentheses the section to which it is equivalent in the Code of Civil Procedure of California.

"Rule 2.—At the foot of each section, in English as well as Spanish, shall be noted the jurisprudence of Puerto Rico that has cited, applied, or interpreted said section, from Volume 1 to Volume 44 of the Puerto Rico Reports."

"2. **A statement of the facts constituting the cause of action,** in ordinary and concise language. (*Emphasis supplied.*)

"3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated."

Section 122 provides that the allegations

"must be liberally construed, with a view to substantial justice between the parties";

Section 142, that:

"The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect";

and Section 191 that, while, if no answer has been filed, the relief granted the plaintiff cannot exceed what he has demanded in his complaint, yet "in any other case" [that is to say, *where, as in the present case, the defendant has filed an answer*], then

"the court may grant him" [the plaintiff] "any relief consistent with the case made by the complaint and embraced in the issue".

F. Printed in the 1933 edition of the Code, under the various sections, in accordance with "Rule 2" of the "Rules for Printing the Code"[16] are various citations to decisions of the Supreme Court of Puerto Rico construing the particular section, thus in effect indicating the approval or legislative adoption of those judicial interpretations.

G. Among the citations so printed under Section 103 of the Code (Edition of 1933, p. 41) are *Vicenty* vs. *Vazquez*, 11 P. R. Rep. 275, 284; *Ochoa* vs. *Lanza*, 17 P. R. Rep. 398, 406; and *Garcia* vs. *Preston*, 17 P. R. Rep. 556, 558.

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[16] See footnote 15, *ante*, p. 54.

The citation to the first of these cases, *Vicenty* vs. *Vazquez, supra*, 11 P. R. Rep. 275, 284, is also printed under Section 191 of the Code (Ed. of 1933, p. 73).

In the this last mentioned case of *Vicenty* vs. *Vazquez, supra*, in dealing with the sufficiency of a complaint, and referring directly to Sections 103 and 191 of the Code, the Supreme Court of Puerto Rico said (11 P. R. Rep., at pp. 284-285):

> "It is high time that we should realize that in modern procedure the prayer of a complaint is not of great importance, and, in fact, such prayer, as we understood it in the former system of procedure, is not now necessary. It is enough in order that the complaint may be considered sufficient that it embody the requisites prescribed by section 103 of the Code of Civil Procedure and permit of the trial being held, at which the proper evidence may be heard.
>
> "**All that the judgment has granted is compatible with the allegations of the complaint and is comprised in the subject matter of the litigation.** The judge of the Mayaguez court has therefore complied with the provisions of section 191 of the Code of Civil Procedure". (*Emphasis supplied.*)

In *Ochoa* vs. *Lanza, supra*, 17 P. R. Rep. 398, 406, the insular Supreme Court, after pointing out that "conclusions of law serve no purpose in pleadings", said [quoting approvingly from Encyclopedia of Pleading and Practice, Vol. 12, p. 1022]:

> "The system of allegations under the code is emphatically a system of facts; only facts must be alleged—that is, in contradistinction to law, arguments, hypotheses, or evidence of the facts."

And in *Garcia* vs. *Preston, supra*, 17 P. R. Rep. 556, 558, the insular Supreme Court, referring to the California Code of Civil Procedure upon which the Puerto Rico Code is modelled [17], said:

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[17] See "Rule 1" of the Rules for Printing the 1933 edition of the Puerto Rico Code of Civil Procedure. Footnote 15, *ante*, p. 54.

> "A complaint under our system must contain a statement of the facts in ordinary and concise language." (Code of Civil Procedure, sec. 103). In a very early case in California, MR. JUSTICE FIELD held that 'facts only must be stated. This means facts as contradistinguished from the law, from argument, from hypothesis, and from the evidence of the facts.' "

H. Under the Code, and in the light of the foregoing rulings, the allegations of the complaint in the present case were amply sufficient to support the insular Supreme Court in taking jurisdiction of this proceeding and in its findings and judgment based upon the corporation's violation of the local corporation law, demonstrated by the facts alleged in the complaint. In treating the allegations as sufficient for that purpose the insular Supreme Court was consistently following its own earlier rulings under the Code.

Point XV.

This ruling of the insular Supreme Court interpreting the local Territorial Code of Civil Procedure and adhering to its own former rulings [in effect adopted by the Legislature by approving the printing of the citations in the 1933 edition of the Code] **was, in any event, not so "clearly erroneous" as to justify the Circuit Court of Appeals in disturbing it, or in reversing the judgment of the Supreme Court of Puerto Rico on this question of local pleading or procedure.**

A. The rule of the respect to be accorded to a decision of a local Territorial court of last resort, interpreting and applying local statutes and local rules of pleading and procedure, has been recently emphatically re-stated by this court with reference to decisions of the Supreme Court of Puerto Rico. In *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511, this court, reversing the Circuit Court of Appeals for the First Circuit, said:

> "And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute, and to sustain such a construction in the absence of clear or manifest error.
>
> "* * * Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

To the same effect are also the earlier decisions cited in the footnotes to this court's opinion in the *Yabucoa Sugar Co.* case (306 U. S., *supra*, at pp. 509-510). The rule is well settled.

B. Clearly, therefore, JUDGE PETERS was right in his dissenting opinion hereinbefore quoted (R. 332; *ante*, Petition, p. 9) in holding the allegations of the complaint sufficient, and that in any event the judgment of the insular Supreme Court,

> "should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all, does not differ essentially from any other suit aimed to settle a dispute between the parties".

C. The majority opinion was wrong (R. 329, *hereinbefore quoted, ante*, pp. 52-53) in reversing it on this ground.

SIXTH

THE *QUASI*-SOVEREIGN GOVERNMENT OF PUERTO RICO CANNOT BE ESTOPPED FROM ENFORCING ITS STATUTES LIMITING THE LAND-HOLDING POWERS OF ITS DOMESTIC AGRICULTURAL CORPORATIONS, BECAUSE OF DELAY OR LACK OF ACTION BY FORMER INSULAR EXECUTIVE OFFICIALS OR FORMER LEGISLATURES; PARTICULARLY, WHERE, AS HERE, THE INSULAR STATUTES WERE ENACTED IN ORDER TO CARRY CONGRESSIONAL STATUTES AND THE POLICY OF THE CONGRESS INTO EFFECT.

Point XVI.

The Government of Puerto Rico is *quasi*-sovereign.

In relation to the question here presented Puerto Rico stands on the same footing as a State of the Union. *People of Porto Rico* vs. *Rosaly*, 227 U. S. 270, 274; *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 261-262.

Point XVII.

The majority opinion of the Circuit Court of Appeals is clearly in error in this respect, and appears to be in direct conflict with the decisions of this court in *Chicago B. & Q. R. R. Co.* vs. *Iowa, supra*, 94 U. S. 155, 162, and *Louisville & Nashville R. R. Co.* vs. *United States, supra*, 282 U. S. 740, 759, **as well as with the decisions of the Circuit Courts of Appeals of the Second and Sixth Circuit, and decisions of the courts of last resort of several of the States.**[18]

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[18] *Seeley* vs. *Helvering* (C.C.A.—II), 77 F. (2d) 323, 324; *Standard Oil Co.* vs. *Fitzgerald* (C.C.A.—VI), 86 F. (2d) 799, 802; *People* vs. *Pullman Palace Car Co., supra*, 175 Ill. 125, 163-165; *Pearson* vs. *International Distillery*, 72 Iowa 348, 34 N. W. 1, 5-6, *affirmed, sub nom. Kidd* vs. *Pearson*, 128 U. S. 1; *Interstate Forwarding Co.* vs. *Vineyard* (Tex. Civ. App.), 3 S. W. (2d) 947, 957; *State* vs. *Burr*, 79 Fla. 290, 84 Sou. 61, 74; *State* vs. *Meek*, 26 Wash. 405, 67 Pac. 76, 78; *State* vs. *Nease*, 46 Ore. 433, 80 Pac. 897, 899; *Parker* vs. *Board of Dental Examiners*, 216 Cal. 285, 14 Pac. (2d) 67, 73.

A. Although recognizing (R. 328) the decisions of this court in the *Chicago B. & Q. R. R. Co.* vs. *Iowa* and *Louisville & Nashville R. R. Co.* vs. *United States* cases, as holding, respectively, that "*A statute, it is true, is not rendered ineffective by non-use*" and "*A failure to enforce a law does not necessarily repeal it*", the opinion nevertheless proceeds to say (R. 328, *supra*):

> "While it may be urged that the insular government may not be prevented from invoking the statutes in a proper case prohibiting the limitation of holdings of agricultural land in excess of 500 acres, we think it should not be permitted *to forfeit land for past violations* which it has winked at and condoned; and if it *confiscates* them it must do so under the rules of eminent domain in accordance with the provisions of the second paragraph of Sec. 6 of Act No. 47,[19] Laws of 1935 (Special Session), *supra*, hereinbefore referred to." (*Italics supplied*)

B. This holding reflects *two serious misapprehensions* in relation to this case: (a) In considering as of importance in this case the thought that the insular government "should not be permitted *to forfeit land*"; and (b) In speaking only of "*past violations*" which "it has winked at and condoned".

Point XVIII

This case does not involve any forfeiture of land.

As heretofore pointed out [*ante*, p. 14; and footnotes 3, 11, 12, pp. 10, 51, 52] *no forfeiture of land is involved in this case*. No such forfeiture was asked in the complaint (Prayer, R. 4-5, 46-47); and none was adjudged by the insular Supreme Court, nor even hinted at in its findings (R. 304, 305). And yet this idea, that the insular government cannot be permitted to "*forfeit land*" in this proceeding, runs all through the opinion

[19] The same Act No. 47 upon which (with Act No. 33) these proceedings are based.

of the majority judges of the Circuit Court; and manifestly influences their conclusions. It reflects a wholly mistaken impression of the character of the case. No question of land forfeiture is involved, in any way.

Point XIX

Nor is this simply a case of "past violations".

A. The foregoing quotation from the opinion (R. 328; *ante*, p. 60) further reflects *another erroneous impression*, that this case is simply one of *"past violations"* which the insular Government "has winked at and condoned".

B. *But this is not a case simply of "past violations" by this corporation.* The complaint does not run upon any such ground. Its allegations are that this corporation [**in the present tense, and at the present time;** Pars. (d) and (e); R. 3, 45]:

> "(d) * * *: owns and controls at present in full ownership, and has owned and controlled for some time, several estates in excess of 500 acres, * * * *.
>
> "(e) The total area * * * which, as already stated, it applies to agriculture, covers some 12,188 acres."

C. The answer of this respondent corporation, defendant in the insular court (R. 89-98), does not deny these allegations of present continuing, active ownership and control. It thereby directly admits them. [Sec. 132, Code of Civil Procedure of Puerto Rico; Appendix, *infra*, p. 78] *Confer, ante*, Point XI-C, p. 43.

D. In this respect, as hereinbefore noted (*ante*, Point XI-D, pp. 43-44), this respondent corporation is in exactly the same position as was the Pullman Company in continuing to maintain the proprietary city of Pullman; and what the Supreme Court of Illinois said in that case (*People* vs. *Pullman Palace Car Co.*, 175 Ill.

125, 163-164; quoted, *ante*, Point XI-D, pp. 43-44) is equally applicable here:

> "The usurpations of the corporation are not only those of the past but also those of the present, and its plea admits it contemplates a repetition of the offenses in the future.

CONCLUSION

The decision of the Supreme Court of Puerto Rico and its judgment in this case were right, and should be affirmed. The judgment of the Circuit Court of Appeals entered on the majority opinion of JUDGES WILSON and MAHONEY, reversing the judgment of the insular Supreme Court, over the dissenting opinion of JUDGE PETERS, was wrong and should be reversed. And in view of the importance and the seriousness of this case and of the questions here involved, the Government of Puerto Rico believes that this case should be reviewed by this court; and earnestly requests that the writ of certiorari be granted.

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APPENDIX

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. (Art. IV, Sec. 3, Cl. 2.)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land. (Art. VI, Cl. 2.)

No person shall be * * * ; nor be deprived of life, liberty, or property, without due process of law. (Fifth Amendment.)

FEDERAL STAUTES:

(1) **The former Organic Act for Puerto Rico, the "Foraker Act"** of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided:

Sec. 27. That all local legislative powers hereby granted shall be vested in a legislative assembly * * * designated "The legislative assembly of Porto Rico".

Sec. 32. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including * * * the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof.

Sec. 33. That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, Numbered One hundred and eighteen, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by General Orders, Numbered One hundred and ninety-five promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the munici-

palities thereof in force, so far as the same are not in conflict herewith, all which courts and tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attaches thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders, Numbered One hundred and eighteen, and One hundred and ninety-five, until otherwise provided by law: *Provided, however,* That the chief justice and associate justices of the supreme court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with the advice and consent of the executive council, and all other officials and attaches of all the other courts shall be chosen as may be directed by the legislative assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attaches for each, their jurisdiction, their procedure, and all other matters affecting them.

(2) **General Orders, No. 118, as promulgated by Brigadier-General Davis, Military Governor of Puerto Rico,** August 16, 1899, provided:

General Orders,
No. 118.

Headquarters Department of Porto Rico.
San Juan, August 16, 1899.

Upon the recommendation of the Judicial Board, the following reorganization and functions of the Judiciary of this Island were approved on August 10th, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the Courts of Justice of this Island will, from the 10th inst. undergo reforms in accordance with the following dispositions:

2. There shall be a Supreme Court of Justice with

fixed residence in the city of San Juan, composed of a Chief Justice and four Associate Justices who jointly will constitute a Judicial Bench for all civil and criminal business; the court shall also have a prosecuting attorney, one Secretary, two court clerks, one file clerk and taxer of costs, six clerks, one janitor and two Bailiffs.

3. The island is divided into five judicial Districts * * * *.

By command of Brigadier-General Davis:

W. P. Hall,
Adjutant General.

(3) **Section 3 of Joint Resolution No. 23, approved May 1, 1900,** provides in pertinent part (31 Stat. 715, 716; 48 U. S. Code):

Sec. 3. * * * **No corporation shall** be authorized to conduct the business of buying and selling real estate or **be permitted** to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and **every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land;** and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (*Emphasis supplied*)

(4) **The present Organic Act for Puerto Rico, the "Jones Law",** Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides:

Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * * *

That no law impairing the obligation of contracts shall be enacted. * * * *

That no *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law. * * * *

Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws.

Sec. 23. That the Governor of Puerto Rico, within sixty days after the end of each session of the Legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn transmit the same to the Congress of the United States, copies of all laws enacted during the session.

Sec. 25. That all local legislative powers in Puerto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Puerto Rico".

Sec. 34. That * * * All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. * * * *

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power

to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof, in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

Sec. 39 [2d Par.] That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Puerto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That the Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico.

Sec. 57. That the laws and ordinances of Puerto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Puerto Rico or by Act of

Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit.

PUERTO RICO:

(1) **The "Act Establishing *Quo Warranto* Proceedings", approved March 1, 1902 ("Rev. Stats. and Codes of Porto Rico", 1902, Pars. 779-787, pp. 282-284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319-1327, pp. 268-269), as originally enacted,** provided in pertinent part:

> Sec. 2. [Par. 780, Rev. of 1902; Par. 1320, Rev. of 1911]. That in case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or exercises rights not conferred by law: The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of "Quo Warranto" in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.
>
> Sec. 6. [Par. 784, Rev. of 1902; Par. 1324, Rev. of 1911]. In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise,[20] and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: *Provided*, that instead of judgment of ouster from a

[20] The "Rev. Stats. and Codes" of 1902 (Par. 784, p. 283, last line at the bottom of the page) says "is" [its] "franchise".

franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense.[21]

(2) **"An Act Establishing The Supreme Court Of Porto Rico As a Court Of Appeals"**, approved March 12, 1903 (Laws of 1903, p. 59; Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241) provides in pertinent part:

> Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out; alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay.
>
> Section 2.—All the Sections of the Law of Civil Procedure establishing proceedings for appeals on cassation are hereby repealed.

(3) **"An Act To Confer Original Jurisdiction On The Supreme Court Of Porto Rico For The Trial And Adjudication Of Certain Property Claimed By The Roman Catholic Church in Porto Rico"**, approved March 10, 1904 (Laws of 1904, pp. 134-135) provided in pertinent part:

> Section 1.—Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing,

[21] By Act No. 37, April 24, 1931 (Laws of 1931, pp. 354-356), Section 6 was amended by inserting a second *proviso* requiring any defendant against whom a judgment has been rendered declaring him "to have usurped any public office or to be unlawfully performing the duties thereof", "immediately" to "retire from said office and cease performing the duties thereof."

or which may arise, between the Roman Catholic Church in Porto Rico and the People of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

Section 3.—The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication * * * *.

Section 5.—Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

[MEMO.—The validity of this Act of March 10, 1904, conferring original jurisdiction on the insular Supreme Court for the purposes designated in the Act, was sustained by the United States Supreme Court in *Ponce* vs. *Roman Catholic Apostolic Church*, 210 U. S. 296, 303-308].

(4) Act No. 30, **An Act to establish a law of private corporations,** approved March 9, 1911; Pars. 407, *et seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89-90 [Revision and substantial reenactment of "An Act Regarding Corporations", Laws of 1902, pp. 258 *et seq.*; Rev. Stats. and Codes of 1902, Civil Code, Title II, Secs. 32 *et seq.*, pp. 759 *et seq.*]

Article I. *Organization of corporations and revocation of incorporation.*

Section 1. Private corporations may be organized by voluntary association of three or more persons, for the purposes and in the manner designated hereunder.

Sec. 2. The object or subjects of corporations organized under this act, may be:

1. The establishment of mercantile or industrial enterprises, which shall be operated and developed under all forms and within all licit combinations which human intelligence and activity may suggest or permit, without any other limitation than those imposed by the statutes of the United States and the laws of Porto Rico.

2. The establishment of building enterprises for the construction of public and private buildings.

Sec. 3. Every corporation has power.

1. To have succession by its corporate name in perpetuity or for the period mentioned in its articles of incorporation.

2. To sue or to be sued in any court.

3. To have and use a seal, which it may alter at will.

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however*, That the power of any agricultural corporation" [The Act of 1902 reads "any corporation", omitting the word "agricultural". Rev. Stats. & Codes of 1902, *supra*, Civil Code, Sec. 32—(4), p. 759] "organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.

5. To appoint the officers and agents required by the business of the corporation and to make them reasonable compensation.

6. To make by-laws as to the number of directors, as to the management, regulation and government of its property and affairs and the transfer of its stock subject to the provisions of this act.

7. To dissolve, either voluntarily or by operation of law and in accordance with the provisions of this act.

8. To possess and exercise, subject to the restrictions and liabilities contained in this act and in the

Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this act and of the Civil Code.

Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the statutes of the United States concerning banks.

Sec. 5. Any corporation organized under this Act may be dissolved at the pleasure of the Legislative Assembly who may also, at its pleasure, alter, suspend or repeal its articles of incorporation or any addition or amendment made to the same. Any amendment or repealing act hereafter enacted by the Legislative Assembly shall be binding upon the corporations organized under this act. Such amendment or repeal, however, shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred by it or them. This title and all amendments thereto shall be deemed a part of the charter of every corporation formed hereunder, except so far as the same are inappropriate and inapplicable to the object of such corporation.

Article II. Formation, Alteration and Dissolution of Corporations.

Sec. 6. Articles of Incorporation.—That on executing, acknowledging and filing articles of incorporation, in accordance with the next section of this act, three or more persons of full legal capacity may organize a corporation for any lawful purpose or purposes, and any such corporation may conduct a business in Porto Rico and the United States, or any foreign country, and may hold, acquire, mortgage and transfer real or personal property, or

maintain one or more offices outside of the Island of Porto Rico, provided such powers are included in the objects mentioned in the certificate of incorporation: *Provided, however,* That it shall not be lawful to organize under this chapter any bank, savings bank, building or loan association, or insurance company: *Provided, further; however*: That the charter of every railroad company, telegraph company, telephone company, canal company, electric light company, turnpike company, or any other company requiring the exercise of the right of eminent domain or any public-service corporation, shall be subject to amendment, alteration or repeal by the Legislative Assembly of Porto Rico, and the charters of such corporations shall expressly so provide; and all such corporations shall be subject to effective regulation, as now or hereafter made be provided by law.

The right and power to purchase, construct, lease and operate railroads, street railways, and the business of developing, transmitting and distributing electricity to the public and private consumers, and any other lawful business incident to, connected with, or which shall promote the main business of said corporation, may be included in one chapter.

Sec. 7. The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgements. They shall set forth:

1. The name of the corporation; but no name shall be assumed already in use by any other corporation, or so nearly similar thereto as to lead to confusion or uncertainty.

2. The location including the town or city, street and number, if there be any, of its principal office in the Island of Porto Rico.

3. The period, if any, limited for the duration of the corporation.

4. The object or objects for which the corporation is formed.

5. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided, and the par value of each share, and the amount of paid-in capital, with which it shall commence business, which shall not be less than one thousand dollars.

6. The names and post-office addresses of the incorporators and the number of shares subscribed for by each and the amount of their subscription paid in by each.

7. Any provisions which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation, or for creating, defining, limiting and regulating the powers of the corporation directors or of the stockholders, provided that such provision or provisions shall be consistent with this act.

(5) *Acts Nos. 33 and 47; Special Session, 1935.*

Act No. 33, approved July 22, 1935, entitled

"An Act To Confer Upon The Supreme Court of Puerto Rico Exclusive Original Jurisdiction In *Quo Warranto* Proceedings That The Government Of Puerto Rico May Institute For Violations Of The Provisions Of Section 752, Title 48, United States Code, And For Other Purposes", copied in full in the Record here ("Exhibit No. 11", R. 239-240),

provides in pertinent part (Laws of 1935, Special Session, p. 418):

Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to

institute a proceeding of the nature of *Quo Warranto.*

Act No. 47, approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, copied in full in the Record here ("Exhibit No. 12", R. 240-243), **amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902** [*ante,* pp. 68-69; Sec. 6 already amended by the Act of 1931, Footnote 21, *ante,* p. 69, amendment concerning public offices, immaterial here], so as to read in pertinent parts:

> Section 2.—In case any person should usurp, or unlawfully hold or execute any public office * * * *, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for" [leave to file][22] "an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for" [leave to file][22] "an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *
>
> Section 6.—In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against

[22] Spanish: "una solicitud para que se instruya información de la naturaleza del *quo warranto*".

such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; . . . .

Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

(6) **Code of Civil Procedure of Puerto Rico (Edition of 1933).**

Section 103.—(426 Cal.)[23] The complaint must contain:

1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

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[23] The references, here and in other sections of this Code, are to the sections of the California Code of Civil Procedure upon which the Puerto Rico Code is modelled. See "Rule 1" of Act No. 6, approved March 31, 1933, "Establishing Rules for the Printing of the Code of Civil Procedure of Puerto Rico"; Laws of 1933, p. 194; *ante*, foot-note 15, p. 54.

2. A statement of the facts constituting the cause of action, in ordinary and concise language.

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

Section 105.—(430 Cal.) The defendant may demur to the complaint within the time required in the summons to answer, when it appears on the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has no legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action; or,

7. That the complaint is ambiguous, unintelligible, or uncertain.

Section 109.—(434 Cal.) If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Section 110.—(437 Cal.) The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counterclaim. If the complaint is verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the de-

fendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

Section 122.—(453 Cal.) In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Section 132.—(462 Cal.) Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counterclaim, must, on the trial, be deemed controverted by the opposite party.

Section 133.—(463 Cal.) A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Section 142.—(475 Cal.) The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

Section 191.—(580 Cal.) The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 382

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.

Respondent.

REPLY BRIEF FOR PETITIONER, IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.

Respondent.

REPLY BRIEF FOR PETITIONER, IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The "Brief of Respondent in Opposition" makes no effective answer to the Petition for Certiorari and Supporting Brief. Respondent's brief is largely an attempt to support the majority opinion of the Circuit Court of Appeals by propositions which respondent unsuccessfully submitted to the Circuit Court of Appeals as well as to the insular Supreme Court, and upon which the Circuit Court of Appeals did not go along with it.

I.

A. Respondent says, referring to the provisions added to the later clauses of Sections 2 and 6 of the Puerto Rican *Quo Warranto* Law by Act No. 47 of the Special Session of 1935,—contemplating that, under certain cir-

cumstances, if the insular government shall have so "chosen",[1] the lands of offending corporations may be confiscated in extreme cases,—that those provisions are, —[or would be, if they should be applied in the present case],—*ex post facto;* because this corporation acquired its lands in excess of five hundred acres prior to the enactment of that amendatory statute No. 47 in 1935; and that, therefore, the statute is invalid, because, in the absence of any express "separability clause", such invalidity of this *ex post facto* provision invalidates the entire statute.

B. Respondent itself points out (*Brief*, p. 3) that it invited the attention of the Circuit Court of Appeals to this contention, both by its assignments of error in that court (R. 309) and by argument there. But the Circuit Court of Appeals ignored the contention; did not go along with the respondent in this respect.

C. Respondent, however, now thinks that that part of the majority opinion of the Circuit Court of Appeals holding[2] [R. 328; *confer* Petition for Certiorari, "Questions Presented * * Fourth", p. 10; and Supporting Brief, pp. 60-62] that the insular government "should not be permitted to forfeit lands for past violations which it has winked at and condoned", may be explained on the theory that (*Brief*, p. 17):

> "The Circuit Court of Appeals obviously felt that an intending forfeiture (confiscation or alienation of Respondent's land) was contemplated and expressed the opinion that in view of its long tolerance of the violations which Act No. 47 makes a ground of confiscation Petitioner should not be permitted to confiscate the land of defendant corporations under the

[1] "and when * * the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction"; next to the last stence of Section 6 as amended by Act No. 47; Appendix to Petition for Certiorari, p. 76.

[2] Which the respondent does not attempt directly to defend.

provisions of Act No. 47 for violations occurring prior to the passage of that Act; in other words, that the penalty of confiscation should not operate retroactively."

D. No reply to this seems necessary. It seems hardly necessary to point out that, if the insular government had "chosen" to confiscate this respondent corporation's lands under that provision of the statute, it would have been necessary for the government to set up, by proper allegations [either in this proceeding or in some other proceeding], that it had so "chosen", and to ask for a decree of confiscation on that basis, and thus to submit the matter to the court for decision; and that, of course, in any such proceeding the respondent corporation would have been entitled to its day in court, and to its opportunity to combat the government's claim of right to have so "chosen" to confiscate the land.

And, in such a case, the corporation would have the opportunity, among other things, if it so desired, to set up [and to be heard upon] its contention that, with regard to its lands purchased prior to 1935, the application of those provisions of that statute would be in the nature of an *ex post facto* proceeding.

E. BUT NONE OF THOSE QUESTIONS IS HERE. The government has not so "chosen" to confiscate this corporation's lands. No such allegation is in the complaint here. Accordingly, the Circuit Court of Appeals, like the insular Supreme Court, ignored this contention of the respondent.

And there is no basis for respondent's present theory in its brief, as above quoted, that that contention is the explanation of what the Circuit Court of Appeals [erroneously] said as to a supposed estoppel of the insular government; or that what the Circuit Court said on this subject was based, in any way, on respondent's contention in this respect.

In any event, even if that *ex post facto* theory

were here upon this record [*which it is not*], there are two answers:

FIRST. *Even if respondent's argument were sound, it would not go to the extent of invalidating the statute.* That is not the effect of the finding, in an ordinary case, that a penal statute has been enacted after the commission of a particular offense charged against a particular defendant, and that it is, therefore, not applicable to that offense. For example, if, in a State where there is no capital punishment for murder, the legislature should change the law and provide capital punishment for that offense, then the fact that the penalty of capital punishment could not be imposed for a murder committed prior to the enactment of the new law, for which the offender might be brought to trial thereafter,—[because, manifestly, if applied to that offense, it would be in the nature of an *ex post facto* application of the law],—would not at all invalidate the statute. It would merely mean that the new statute is not applicable to offenses committed before its enactment. So here; even if, for the purposes of the argument, respondent's contention on this point were to be conceded to be sound. But

SECOND. *In any event the argument is not applicable in favor of this respondent in this case.* As is pointed out in Point XIX (pp. 61-62) of the Supporting Brief to our Petition for Certiorari here, this respondent corporation appears to be *still violating the statute*; still violating the restriction contained in its own Articles of Incorporation; and intending actively to continue its violations.

The prohibitions, both of the federal legislation and of this corporation's own Articles of Incorporation, are not directed simply at the fact of its having purchased the land at some time in the past; but are directed, equally, at its continuing, while engaged in agriculture, to hold and to control this great tract of land, and to use it for agricultural purposes. *These are present violations* of the stat-

utes, and of its own Articles, committed and continuing to be committed *since the date of the enactment of Act No. 47 in 1935.* There is here no disclaimer; no statement of any purpose to discontinue the violations; no application to the court for clemency on any such ground. In so far as the violations have continued since the date of the enactment of Act No. 47, and still continue, there is no ground for respondent's *ex post facto* argument.

G. Respondent complains (*Brief*, pp. 2-3, 12-13) of the filing of *lis pendens* notices with the local Registrars of Property, and that the insular Supreme Court did not consider in this proceeding the respondent corporation's motion to direct their cancelation; and respondent seems to consider that as being some ground for sustaining the judgment of the Circuit Court of Appeals here. But that question is not in this case at all, on this record. Respondent could not raise it upon its demurrer to the complaint which does not mention that subject (R. 2-5, 44-47). As was properly pointed out in the Attorney General's answer (R. 65) to the respondent's motion in the insular Supreme Court for the cancelation of these notices,

> "III. The defendant has an adequate and proper remedy by requesting the cancelation of the aforesaid notices *in the district court.*" (*Italics supplied*)

Had the respondent so desired, it could have raised this question by direct proceedings in the District Court, from which it could have appealed in regular course, in case it should have felt itself aggrieved by the decision of that court.

But no question relating to the *lis pendens* notices, or to their possible effect, is here in this case; or can have any bearing here. The Circuit Court of Appeals properly ignored respondent's contention in this respect.

II.

Respondent says (*Brief*, pp. 4, 9) that these Acts Nos. 33 and 47 of 1935 offend against the provisions of Section 34 of the Organic Act for Puerto Rico as to title, and as to amending prior acts of the Legislature.

A. As respondent itself says (*Brief*, pp. 2, 3), the respondent raised this question by its assignments of error in the Court of Appeals and argued it there. But that court ignored it; although, in stating the case (*Majority Opinion*, R. 320), it noted the fact that the respondent corporation was making that contention. In other words, in effect, it agreed with the insular Supreme Court in overruling respondent on this point.

B. *The contention is unsound in any event.* These statutes do not offend against these provisions of the Organic Act.

FIRST. The titles are sufficient. Each of them "*states a single main object*;[4] and is fully sufficient to guard against the evil confusion prohibited by the Organic Act" (*Gallardo* vs. *Porto Rico Ry. Light & Power Co.*, 18 F. (2d) 918, 922), the aim being "to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and

---

[3] Organic Act, Sec. 34, Pars. 8 and 9, c. 145, 39 Stat. 951, 962:

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

"No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length."

[4] *Italics supplied.*

fraud in legislation." (*Posados, Collector, vs. Warner, Barnes & Co.*, 279 U. S. 340, 344).

SECOND. As to the respondent's contention (*Brief*, p. 9) that these provisions of Section 34 of the Organic Act prevent the Legislature of Puerto Rico from "adopting by reference"[5] the federal joint resolution [the 500-acre law], manifestly the respondent is mistaken. Respondent cites no authority in support of this contention. Plainly, on its face, paragraph 9 of Section 34 [Footnote 3, *ante*, p. 6] *relates simply to reenactment or amendment of former acts of the Legislature itself.* The Congress did not intend to prevent the Legislature from referring to the underlying legislation of the Congress, which is a part of the "supreme Law of the Land" in the Island [Const. Art. VI, Sec. 2; which the Legislature could not change] *as boundary stones*, or from thus adopting it by reference as a part of its own local legislation. [*Confer Points VI and VII*, pp. 32-37, *Supporting Brief to the Petition for Certiorari.*]

The Circuit Court of Appeals was right in ignoring this contention of the respondent.

III.

Respondent attempts to evade the "THIRD" question presented in the Petition for Certiorari (*Petition*, pp. 9-10, *and Supporting Brief*, "Fifth", Points XIV and XV, pp. 52-58) concerning the error of the Court of Appeals in reversing the Supreme Court of Puerto Rico on the ground of supposed insufficiency of the allegations of the complaint to charge violation of the local insular statutes.

A. The correctness of our position in this respect is emphasized by the decision of this court January 2, 1940, [since the petition for certiorari was filed in the present

[5] Petition for Certiorari, Supporting Brief, Points VI and VII, pp. 32-37.

case] in *Rafael Sancho Bonet, Treasurer of Puerto Rico* vs. *The Texas Company*, No. 132 at the present term of this Court, emphatically restating (at pp. 5-7 of the opinion) the established rule of the respect to be accorded to a decision of the local Supreme Court of Puerto Rico interpreting and applying local statutes and rules of procedure.

B. Respondent now seeks to evade the application of that rule to this case by claiming (*Brief*, pp. 5-6) that the Supreme Court of Puerto Rico did not in reality treat the allegations of the complaint as sufficiently charging violation of the local statutes, and that, indeed (*Brief*, pp. 5-6),

> "It was never suggested in the Supreme Court of Puerto Rico that the amended complaint set out as a ground for *quo warranto* that Respondent was violating a statute of Puerto Rico, nor did the Supreme Court of Puerto Rico at any time hold that the amended complaint charged the violation of any statute of Puerto Rico, and finally the judgment of the Supreme Court of Puerto Rico in this case was not based upon a finding that the Respondent had violated a statute of Puerto Rico."

C. But (1) the record shows that the Supreme Court of Puerto Rico *did specifically* base its judgment in part upon its finding (R. 304, 305),

> "that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of * * * its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres";

and (2) the Circuit Court of Appeals itself finds [*Majority Opinion*, R. 327] that: "The judgment of the insular Supreme Court was based in part on these allega-

tions" that the "local law of Puerto Rico had been violated"[6].

D. Plainly, the insular Supreme Court's finding that this corporation's holding of 12,188 acres of land was "*in violation of * * its own articles of incorporation*" was *necessarily a finding of its violation of the local laws.* The local corporation law of March 1, 1902,[7] reenacted without change in this respect in 1911, and in force ever since,[8] states (Secs. 1 and 2) for what objects private corporations may be organized, and (Sec. 3) their powers, with the *proviso*, however (Sec. 3, Par. 4),

> "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States of May first, nineteen hundred";

that every corporation may (Sec. 3, Par. 8) "*possess and exercise, subject to the restrictions* and liabilities *contained in this act and in* the Civil Code *and its articles of incorporation* such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are *not inappropriate to or inconsistent with such articles of incorporation* * * *"; and further that (Sec. 4):

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section."

[6] But proceeds to hold (R. 329) that the allegation of violation of the local law was "too indefinite", and to overrule the local Supreme Court on that ground. [*Brief in Support of Petition for Certiorari*, pp. 52-58].

[7] Twenty-five years before this corporation's organization in 1927.

[8] Petition for certiorari, Appendix, pp. 70-74.

Necessarily, therefore, the insular Supreme Court's finding that this corporation "engaged in agriculture" was holding this great tract of land, "in violation of * * * its own Articles of Incorporation", was a direct finding of its violation of this local corporation law under which it was organized.

And the local *quo warranto* law, from its first enactment on March 1, 1902 (the same date as the enactment of the local corporation law) has carried the provision:[9]

> "Sec. 2. That in case * * any corporation * * * * exercises rights not conferred by law",

it is liable to *quo warranto* proceedings for its dissolution.

IV.

Respondent says (*Brief*, p. 11):

> "* * * by Acts Nos. 33 and 47 the Legislature of Puerto Rico changes or attempts to change a law *addressed to it*, and limiting its legislative power *into a law addressed to corporations.*" (*Italics supplied*)

This is a restatement by respondent of the statement in the majority opinion of the Court of Appeals that (R. 325):

> "The limitation of the Joint Resolution of Congress is on the powers of the Legislature. Act No. 33 converts it into a limitation on the powers of corporations."

A. **Neither the Court's opinion nor the respondent cites any authority** for this bald statement of the supposed limited character of this Act of Congress, the Joint Resolution of May 1, 1900. The contention is clearly erroneous.

B. Joint Resolution No. 23, of May 1, 1900, like every other Act of Congress relating to the Territories, was en-

[9] Petition for Certiorari, Appendix, p. 68; provision reenacted in Act No. 47 of August 7, 1935, Sec. 2, Petition for Certiorari, Appendix, p. 75.

acted in the exercise of the plenary power of the Congress under Article IV, Section 3, clause 2 of the Constitution; and is the "supreme Law of the Land" in the Island (Const., Art. VI, Sec. 2[10]), binding directly, of its own force, not only on the Legislature, but likewise on every other branch of the insular government, and necessarily entering into and forming a part of every act of the Legislature. It therefore necessarily, of its own force, automatically entered into and became a part of the local Corporation Law enacted by the Legislature, and likewise of the articles of incorporation of every corporation chartered under that law, or under any authority from the Legislature,—and hence, of the Articles of Incorporation of this respondent company,—even aside from the express adoption of it by the Legislature in the *proviso* to Paragraph 4 of Section 3 of the Corporation Law (*ante*, p. 9).

C. *The wording of the Joint Resolution itself* [J. R. No. 23, Sec. 3, 31 Stat. 715, 716] *indicates that it is intended to be addressed,* not only to the Legislature, or to the Legislature alone, but likewise, like every public law, to the entire insular government and to the public generally, and *particularly to the corporations themselves.* It says:

(a) "That all franchises * * * shall provide that the same shall be subject to amendment, alteration, or repeal".

(b) "* * * shall forbid the issue of stock or bonds, except in exchange for actual cash, * * *".

(c) "No corporation shall be authorized to conduct the business of buying and selling real estate".

(d) "No corporation shall * * * be permitted to hold or own real estate except * * *."

(e) "and every corporation hereafter authorized to engage in agriculture shall by its charter be re-

[10] Petition for Certiorari, Supporting Brief, p. 23.

stricted to the ownership and control of not to exceed five hundred acres of land".

(f) "and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture."

(g) "Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title".

(h) "Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable".

V.

"Courts of the United States"

A. Respondent cites (*Brief*, p. 11) *Good* v. *Martin*, 95 U. S. 90, 98, and *Clinton* v. *Englebrecht*, 13 Wall. 434, 447, that the Territorial Supreme Courts, such as the Supreme Court of Puerto Rico, are not constitutional courts of the United States clothed with the "judicial Power" of the Union under Article III of the Constitution.

B. Of course they are not; but that does not at all militate against what is said in Point IV, pp. 28-31, of our Brief in Support of the Petition for Certiorari here, where that underlying principle is fully recognized.

C. But, as is there said, the so-called federal district court for Puerto Rico is no more a constitutional court of the United States, under Article III of the Constitution, than is the insular Supreme Court or the other insular courts. There is nothing in Section 41 of the Organic Act [11] debarring the insular courts of the Island, sitting under the authority of the Congress under the same Act [Or-

[11] Act of March 3, 1917, c. 145, Sec. 41, 39 Stat. 951, 965.

ganic Act, Sec. 40] from taking jurisdiction of any question that may come before them in the interpretation of any part of the whole body of the law of the Island existing under the authority of the sovereignty of the United States, whether enacted directly by the Congress itself as the "supreme legislature" for the Island, or by the local Legislature by its delegated authority as the local agent of the Congress [or, indeed, by a municipal council, or by way or rules or regulations by the Public Service Commission, or the Treasurer, or other local authority], all alike resting upon the authority of the Congress and forming the one single body of the law of the Island, all enacted by the one authority of the Congress, either by its own direct action or by authority delegated by it.[12]

VI

Other matters set up in the respondent's brief are believed to be sufficiently covered by what we have said in the Petition for Certiorari and the Supporting Brief.

VII

Respondent's brief does not seriously question the public importance of the questions presented in this case, nor the "Reasons for Granting the Writ" stated in the Petition for Certiorari (*Petition*, pp. 16-18).

CONCLUSION

For the reasons stated in our original Petition for Certiorari as well as in the Supporting Brief and in this Reply Brief, it is believed plain that the decision of the

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[12] Respondent apparently [*erroneously*] assumes that there are two separate bodies of the law in a Territory, such as Puerto Rico, as there are in a sovereign State of the Union. But of course that is not the case. *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 264-266.

majority judges of the Circuit Court of Appeals, reversing the judgment or decree of the insular Supreme Court, was wrong; that the writ of certiorari should be granted; and that the judgment of the Circuit Court of Appeals should be reversed, and that of the Supreme Court of Puerto Rico affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC.,
Respondent.

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.,

Respondent.

BRIEF FOR PETITIONER

INTRODUCTION

This case presents the question of the power of the Legislature of Puerto Rico to provide for enforcing the so-called "500 acre law" of Congress for Puerto Rico by proceedings in the insular Supreme Court, and, specifically, of the validity of Puerto Rican Acts Nos. 33 and 47 of the Special Session of 1935 authorizing such proceedings.

The Supreme Court of Puerto Rico, in an original proceeding in that court, ordered mandamus to dissolve the respondent corporation, holding and using for agricultural purposes some 12,188 acres of land, in violation both of the 500 acre law and of its own articles of incorporation. The Circuit Court of Appeals for the First Circuit reversed [R. 329, 333; 106 F. (2d) 754], "but without prejudice to future proceedings under valid statutes, or in the federal courts based on a violation of Sec.

39 of the Organic Act, or Sec. 752, Title 48, U.S.C.". The decision of the Circuit Court of Appeals was by a divided court. The majority opinion was by JUDGE WILSON, concurred in by JUDGE MAHONEY (R. 315-329). JUDGE PETERS filed a dissenting opinion (R. 330-332).

This court granted certiorari (R. 334).

The judgment of the insular Supreme Court (R. 305-306) in favor of this Petitioner, ordered the forfeiture of the corporate charter and the dissolution and winding up of the business of the respondent Rubert Hermanos, Inc., a domestic agricultural corporation of Puerto Rico, with a statutory fine of $3,000, and costs including attorneys' fees. The judgment was based upon the court's finding that (R. 305):

> "1. * * * the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres."

The *quo warranto* proceedings were begun by original complaint in the insular Supreme Court (R. 1-35) upon the authority of two statutes enacted at the Special Session of the Legislature of Puerto Rico in the year 1935, giving that Court original jurisdiction in such cases. They are Act No. 33, approved July 22, and Act No. 47, approved August 7, of that year. [*Appendix, infra*, pp. 78-80].

STATEMENT

As stated, this case primarily involves the power of the Legislature of Puerto Rico to provide for enforcing the so-called "500 acre law" by proceedings in the insular Supreme Court.

FIRST: The Congress, by Joint Resolution No. 23, May 1, 1900 (Appendix, *infra*, p. 69), provided that, in Puerto Rico:

> "Sec. 3. * * * No corporation shall * * * be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."

The restriction was emphasized and in effect re-enacted in the second paragraph of Section 39 of the present Organic Act for the Island, March 2, 1917 (Appendix, *infra*, p. 71).

SECOND: The insular Legislature ["Legislative Assembly" under the former "Foraker Act"] imported this restriction into its local Corporation Law of March 1, 1902, and into the revision of it, March 9, 1911 (Appendix, *infra*, pp. 74-78), by the *proviso* (Sec. 3, sub-par. 4):

> "*Provided, however*, That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred";

prescribed that the corporation's incidental powers shall be (Sec. 3, sub-par. 8)

> "subject to the restrictions and liabilities contained in this act and in the Civil Code and its articles of incorporation";

and (Sec. 4) that:

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers

"except in accordance with the provisions of the preceding section";

and required (Secs. 6, 7) "articles of incorporation" to be filed, and to state *inter alia* (Sec. 7, sub-par. 4):

> "The object or objects for which the corporation is formed."

And by the insular *Quo Warranto* Law of March 1, 1902, Sections 2 and 6 (Appendix, *infra*, p. 72), it was made a ground for *quo warranto*, and for ouster from the corporate franchise, with fine and costs, that

> "any corporation • • • exercises rights not conferred by law".

THIRD: Disregard of this 500 acre law becomes notorious. In the present case, the insular Supreme Court finds from the census reports (Opinion, R. 294) that:

> "not less than 196,757 acres, or something more than 70 per cent of the total acreage planted to sugar cane, are owned or controlled by companies which in turn are controlled almost exclusively by absentee stockholders",

and that these facts

> "constitute the elements of the most intricate problem confronting the people of this Island".

FOURTH: In order to facilitate enforcement of the 500 acre law, the Legislature, at its Special Session in 1935, passed the two statutes, Acts Nos. 33 and 47 [Appendix, *infra*, pp. 78-80], vesting original jurisdiction in the Insular Supreme Court in such cases. These proceedings were brought under those statutes. Act No. 33 confers "exclusive original jurisdiction" in *quo warranto* proceedings in cases of "violations of the provisions of Sec-

tion 752, Title 48, United States Code" [which is the Joint Resolution No. 23 of May 1, 1900]. Act No. 47 amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902, so as to authorize original proceedings in the insular Supreme Court,

> "whenever any corporation, • • • exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes."

FIFTH: The present respondent corporation was organized in 1927 under the insular Corporation Law to "engage in agriculture in general" with usual broad powers as a cane growing and sugar manufacturing company, but with the express restriction in Section 4-(f) of its articles of incorporation (Complaint, "Exhibit A", R. 8):

> "*provided, however*, that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States".

Nevertheless, the corporation (Complaint, Par. (d), R. 3; Amended Complaint, R. 45),

> "owns and controls at present in full ownership and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane",

aggregating some 12,188 acres (*ibid*, Par. (e): R. 3, 45).

SIXTH: It is alleged that this is done (Complaint, Par. (d), R. 3; Amended Complaint, R. 45),

> "notwithstanding the express prohibition contained in its articles of incorporation and besides in open

> violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752)",

and also (Par. (f); R. 3-4 and 45-46) in violation of the public policy of Puerto Rico.

The prayer of the complaint is (R. 4-5 and 46-47):

> "to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises."

The "Amended Complaint" (R. 44-47) was filed, with immaterial modifications, upon defendant's "Motion to Strike" certain allegations (R. 36-41).

SEVENTH: The corporation demurred to the amended complaint (R. 51-58), and also answered (R. 89-98) substantially admitting the allegations, but denying that they stated a cause of action, challenging the jurisdiction of the court, and also setting up that the insular government is estopped, "barred from cancelling the franchise of this corporation", because it has (R. 96-97)

> "tolerated, allowed and encouraged the development of the sugar industry during all these years until it has reached the present stage",

without

> "questioning the right of a sugar corporation to own and control more than five hundred acres, provided this was reasonably necessary in order to obtain the raw material for the purpose of manufacturing and producing sugar and to engage in the sugar industry; that the People of Puerto Rico collected and still collects taxes upon the property."

EIGHTH: No questions of fact are involved. At the hearing the corporation offered no evidence. At the close of the People's case, it moved for dismissal on substantially the same grounds stated in its demurrer and answer (R. 121-129). The insular Supreme Court overruled its motion to dismiss (R. 129); and afterwards, in a careful opinion (R. 285-304) decided the case in favor of the government, upheld the validity of the two statutes, Acts Nos. 33 and 47 vesting original jurisdiction in the court, overruled the corporation's defense of estoppel, and gave judgment of ouster from the corporate franchise, with a $2,000 fine and costs (R. 305).

As stated, the Circuit Court of Appeals reversed, by a divided court (R. 315-333).

QUESTIONS PRESENTED

The case thus presents, primarily, the important question of the power of the Legislature of Puerto Rico to carry into practical effect by insular statutes the purpose of the Congress to limit the land holdings of agricultural corporations in the Island to 500 acres.

The controversy centers chiefly about the validity of the two insular statutes under which these proceedings were instituted; together with a question of the sufficiency of the allegations of the complaint, and of whether the Circuit Court of Appeals should have reversed the decision of the Territorial Supreme Court upon such a question of local pleading or procedure. There is also the other question of whether the *quasi*-sovereign government of Puerto Rico can be deemed to be estopped from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures, particularly where, as here, the insular statutes were enacted in order to carry Congressional statutes and the policy of the Congress into effect.

FIRST. **Is Act No. 33 of the Legislature of Puerto Rico, approved July 22, 1935,[1] a valid statute?** The Supreme Court of Puerto Rico considers it valid. The majority opinion of the Circuit Court of Appeals holds it "null and void", as an attempt, in effect, to "amend" or change the character of the federal law by adding penalties and providing for enforcement in the insular courts, or as attempting to change its character from one "*enacted for the only purpose of imposing limitations upon the legislative powers of the legislature*" (R. 322), to a law binding directly on the corporations themselves. Petitioner believes the statute valid.

SECOND. **Is Act No. 47 of the Legislature of Puerto Rico, approved August 7, 1935,[2] amending Sections 2 and 6 of the insular *Quo Warranto* Law of March 1, 1902, a valid statute?** The insular Supreme Court considers it valid. The majority of the Circuit Court of Appeals hold it invalid, for like reasons as Act No. 33, at least in so far as it confers original jurisdiction on the Supreme Court of Puerto Rico in *quo warranto* proceedings brought against a domestic corporation of the Island on the ground that it has exercised rights or performed acts or made contracts "in violation of the express provisions of the Organic Act of Puerto Rico"; and also express doubt [*but do not directly decide;* R. 328-329] as to whether the balance of the Act is valid, conferring original jurisdiction upon the insular Supreme Court in such *quo warranto* proceedings based upon *violations of local insular statutes*, "no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act" (*Majority Opinion,*

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[1] Laws of 1935, Special Session, p. 418; *Appendix, infra*, pp. 78-79.

[2] Laws of 1935, Special Session, pp. 530-536; *Appendix, infra*, pp. 79-80.

R. 329). JUDGE PETERS considers the statute valid, at least insofar as it relates to violations of insular statutes. (*Dissenting Opinion*, R. 330-332). Petitioner believes it valid; and also believes that, in any event, so much of the Act is valid as confers upon the insular Supreme Court original jurisdiction in such *quo warranto* proceedings when *based upon violations of* INSULAR *statutes*, which is enough to sustain the jurisdiction in these proceedings.

THIRD. **Should the decision of the insular Supreme Court, treating the allegations of the complaint as sufficiently definite allegations of violations of insular statutes, have been disturbed by the Circuit Court of Appeals, or the insular court's judgment reversed, on such a question of local pleading and procedure, in view of the established rule of the respect to be accorded to a decision of a Territorial Supreme Court construing and applying local Territorial laws and rules of pleading and procedure?**

The complaint alleges facts from which the conclusion of violation of insular statutes necessarily follows; although perhaps not specifically alleging that legal conclusion, in so many words. The insular Supreme Court treated it as sufficient in this respect, and, in part, based its findings and judgment upon these allegations. The majority opinion of the Circuit Court of Appeals holds "the allegation is too indefinite to constitute a good charge in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines" (R. 329). JUDGE PETERS, to the contrary, says (*Dissenting Opinion*, R. 332):

> "It seems to me, however, in view of the fact that the field of possible violations by the land-holding agricultural corporations is confined to local laws, and that the allegations in the complaint, when put together, state facts and describe a situation which show a violation of such laws, that the judgment of the Supreme Court should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all,

does not differ essentially from any other suit aimed to settle a dispute between the parties".

Petitioner believes that JUDGE PETERS is right; that the allegations are sufficient in this respect, under the Code of Civil Procedure of Puerto Rico; and that, in any event, the judgment of the Territorial Supreme Court was not so "clearly erroneous" as to justify reversal on such a question of local pleading or procedure.

FOURTH. **Should the *quasi*-sovereign government of Puerto Rico be deemed to be estopped from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures; particularly, where, as here, the insular statutes were enacted in order to carry Congressional statutes and the policy of the Congress into effect?**

The insular Supreme Court holds that the insular government cannot be estopped on any such ground (R. 301-304). The majority of the Circuit Court of Appeals, to the contrary, hold (R. 328) that the insular government "should not be permitted to forfeit land[3] for past violations which it has winked at and condoned". JUDGE PETERS' dissenting opinion (R. 330-332) does not specifically deal with this question. Petitioner believes the insular Supreme Court right; that the government cannot be thus estopped; and that the majority judges of the Circuit Court of Appeals were perhaps led into error by failing to notice that no land forfeiture is involved in this case at all; that none was asked in the complaint, and none adjudged by the insular court; and that there is here

[3] Although there is no prayer "to forfeit land" anywhere in the complaint (R. 2-5, 46-47), nor any land forfeiture adjudged by the insular court (*Judgment*, R. 305). Nothing of that kind at all. The only "forfeiture" sought or adjudged is simply of the corporate franchise,—of its license to be a corporation.

a case of present continuing violations,—not simply of "past violations".

OPINIONS OF THE CIRCUIT COURT OF APPEALS

The principal grounds of the majority decision, as well as those of JUDGE PETERS' dissent, are indicated under the headings "Questions Presented" (*ante*, pp. 7-11), and "Petitioner's Position" (*infra*, pp. 11-16).

OPINION OF THE INSULAR SUPREME COURT

The opinion of the Supreme Court of Puerto Rico, delivered by MR. JUSTICE TRAVIESO on July 30, 1938 [53 P.R. Dec. 779; *Spanish edition*], is on pages 285 to 304 of the record.

STATUTES

The pertinent provisions of the two insular statutes whose validity is here directly involved, Acts Nos. 33 and 47 of the Legislature of Puerto Rico of the Special Session of 1935, are in the Appendix (*infra*, pp. 78-80).

Other pertinent Constitutional and statutory provisions, federal and insular, are likewise in the Appendix (*infra*, pp. 67-82).

PETITIONER'S POSITION

Petitioner believes the Supreme Court of Puerto Rico was right, substantially for the reasons stated in its opinion; that the majority judges of the Circuit Court of Appeals were wrong in reversing it; that the dissenting opinion of JUDGE PETERS is right in the main [except in so far as it indicates doubt of the validity of Act No. 33, and of any portion of Act No. 47, and except as it apparently treats the restrictions of the Congressional Joint Resolution and of Section 39 of the Organic Act as binding only on the Legislature, and not also directly on the corporations themselves]; that the judgment of the Circuit Court of Appeals should be reversed; and that of

the Supreme Court of Puerto Rico affirmed. Petitioner's position may be summarized as follows:

FIRST. Joint Resolution No. 23 of the Congress, May 1, 1900, restricting corporations engaged in agriculture in Puerto Rico to the ownership and control of not to exceed 500 acres of land, emphasized and in effect re-enacted by Section 39 of the present Organic Act of 1917, is an effective expression of the public policy of the United States; and, as an act of the Congress, the "supreme legislature" for the Territories, is a part of the domestic "supreme Law of the Land" of Puerto Rico, and likewise a part of the public policy of Puerto Rico. As such, it is a direct limitation, not only upon the legislative powers of the insular Legislature in chartering corporations or in making provision for their incorporation, but also upon the powers of the corporations themselves; and is directly applicable to them.

SECOND. Insular Acts Nos. 33 and 47 of the Special Session of the Legislature of 1935 are both valid. They were validly enacted by the Legislature in the exercise of the general local legislative powers with which the Congress had endowed it by the Organic Act. They were properly enacted for the purpose of carrying into effect the express direction of the Congress that no agricultural corporation in the Island should ever be "permitted" to hold or own real estate except such as might be reasonably necessary to carry out the purposes for which it was created, with the accompanying express restriction on its authorized purposes to the ownership and control of not to exceed 500 acres of land.

THIRD. The power of the Territorial Legislature as the delegate or agent of the Congress to enact local laws [not in conflict with any Congressional legislation] to supplement the Act of the Congress and to provide means for carrying the Congressional will into effect by

proceedings in the local insular courts, is clear. The contrary decision of the majority of the Circuit Court of Appeals is in conflict with the applicable decision of this Court in *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 260 *et seq.* Accordingly, these Acts Nos. 33 and 47 conferring original jurisdiction on the insular Supreme Court in *quo warranto* proceedings based upon violations of such Act of Congress, as well as upon,—or wholly upon,—violations of corresponding insular statutes, such as the local Corporation Act of 1902 as revised in 1911, and the local *quo warranto* Act of 1902, as amended by this Act No. 47 of 1935, are valid enactments of the Legislature.

FOURTH. Consequently, the insular Supreme Court had jurisdiction of this proceeding.

FIFTH. The provision of the local corporation act of Puerto Rico of 1902, both as it originally stood and as revised in 1911 and still in force (sub-paragraph 4 of Section 3), prescribing that the power of any agricultural corporation organized under that Act

> "to hold real estate shall be subject to the prohibition contained in Section 3 of the Joint Resolution of the Congress of the United States of May 1, 1900",

was a valid and effective *adoption by reference* of that provision of the Act of Congress *as a part of the local law of Puerto Rico*, "the details of which, instead of being recited, are adopted by reference" [*confer People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. 253, 266]; as were likewise also the corresponding provisions of Section 2 of the *quo warranto* Act, as amended by this Act No. 47 of 1935, concerning acts of corporations "*in violation of the express provisions of the Organic Act of Puerto Rico*," and those of Act No. 33 concerning "*violations of the provisions of Section 752, Title 48, United States Code.*"

SIXTH. The Circuit Court of Appeals majority was in error: (1) In holding that the Supreme Court of Puerto Rico "is a statutory court and its jurisdiction is defined by statute", instead of a court of superior general jurisdiction, as in reality it is; (2) In considering the Joint Resolution of the Congress of May 1, 1900, together with the second paragraph of Section 39 of the present Organic Act, solely as limitations upon the legislative powers of the Legislature of Puerto Rico in chartering corporations, instead of, as those enactments of the Congress clearly are, parts of the body of the "supreme Law of the Land" in Puerto Rico, directly binding, not only upon the insular Legislature, but likewise equally upon all other branches of the insular government, and upon the corporations themselves, as well as upon all citizens of the Island; (3) In considering these Acts Nos. 33 and 47 enacted for the purpose of carrying the Congressional will and policy into effect, as attempts by the Legislature to "amend" the Acts of Congress, and therefore, as invalid; (4) In considering Section 256 of the Judicial Code of the United States [28 U. S. Code 371], relating to the delimitation of jurisdiction as between the courts of the United States, and the courts of the sovereign States of the Union, as a limitation upon the power of the Legislature of Puerto Rico in this respect [*over-looking the decisions of this Court* that all of the courts in the Island, alike the so-called "insular courts", as well also as the so-called "District Court of the United States for Puerto Rico", are in reality all simply Congressional courts, all alike instituted by the Organic Act (Secs. 40 and 41), and all alike, and equally, "courts of the United States", and none of them constitutional courts under Article III of the Constitution, — the so-called "federal" court any more than the so-called "insular" courts [*Romeu* vs. *Todd*, 206 U. S. 358, 368; *Balzac* vs. *Porto Rico*, 258 U.S. 298, 312; *Mookini* vs. *United States*,

303 U. S. 201, 205]; (5) In this connection in its reference to "a *forfeiture of the property* of a corporation", overlooking the fact that NO FORFEITURE OF THE PROPERTY of this corporation was asked in the complaint, or included in the judgment of the insular court in this case, other than of its franchise to be a corporation.

SEVENTH. Likewise it erred further: (6) In failing to hold that, in any event, so much of Act No. 47 is valid as vests the Supreme Court of Puerto Rico with original jurisdiction in *quo warranto* proceedings against a corporation, based upon its violation of *local insular statutes* [regardless of any question of the validity of that portion of the Act relating to cases charging violation of the Organic Act[4]], and is complete in itself, and can stand alone as an independent statute; and (7) In holding that the insular Supreme Court has not been vested with jurisdiction in cases of "an *ultra vires* act" of a corporation "in violation of its articles of incorporation", "or of a federal law".

EIGHTH: Likewise it erred: (8) In holding the allegations of the complaint in this case "too indefinite to constitute a good charge" of this corporation's violation of insular statutes [the insular corporation law and the insular *quo warranto* law]; and (9) In overruling the decision of the insular Territorial Supreme Court on this question of local law and local procedure [the local Supreme Court having treated the allegations as sufficient under the local Code of Civil Procedure]. The dissenting opinion of JUDGE PETERS was clearly right on this point. The majority opinion is in conflict with the applicable

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[4] And in this connection overlooked the rule as to the separability of statutes, established by the decisions of this court in *Champlin Refining Co.* vs. *Commission*, 286 U. S. 210, 234-235; *El Paso & N. E. Ry. Co.* vs. *Gutierrez*, 215 U. S. 87, 96-97; and earlier cases.

decisions of this court in *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511, and *Sancho Bonet, Treasurer* vs. *Texas Company*, No. 132, United States Law Week, January 2, 1940, pp. 37, 38, and the many earlier decisions there cited, as to the respect to be accorded to decisions of the local Territorial courts of last resort interpreting and applying local statutes and local rules of pleading and procedure.

NINTH: It is likewise in error and is in conflict with, or misinterprets and misapplies, the applicable decisions of this court in *Chicago etc. R.R. Co.* vs. *Iowa*, 94 U. S. 155, 162, and in *Louisville & Nashville R.R. Co.* vs. *United States*, 282 U. S. 740, 759, and is in conflict with the decisions of other Circuit Courts of Appeals, that of the Second Circuit in *Seeley* vs. *Helvering*, 77 F. (2d) 323, 324, and that of the Sixth Circuit in *Standard Oil Co.* vs. *Fitzgerald*, 86 F. (2d) 799, 802, as well as with the decisions of the courts of last resort of several of the States of the Union, in holding (R. 328) that the insular Government of Puerto Rico can be deemed estopped from enforcing its statutes limiting the land holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures; that the insular Government . .

> "should not be permitted to forfeit land for past violations which it has winked at and condoned";

and is further again in error in this connection in failing to notice that [as hereinbefore pointed out] there is no question of forfeiture of land involved in this case; that none was asked in the complaint, and none was adjudged.

TENTH: No *ex post facto* action is involved.

ELEVENTH: Acts Nos. 33 and 47 are amply sufficient in title and form under Section 34 of the Organic Act.

OPINIONS BELOW

The Opinion of the Supreme Court of Puerto Rico

(R. 285-304) is officially reported in 53 P. R. Dec. 779 (*Spanish edition, Advance Sheets*). It has not yet appeared in the English edition of the Puerto Rico Reports. The opinion of the Circuit Court of Appeals (*Majority opinion*, R. 315-329; *dissenting opinion of* JUDGE PETERS, R. 330-332) is reported in 106 F. (2d) 754 (*Advance Sheets*).

JURISDICTION

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered September 27, 1939 (R. 333).

The petition for certiorari, together with the supporting brief for the petitioner, and the transcript of the record, was filed in this court on December 11, 1939, within the time limited by the statute. Certiorari was granted on January 29, 1940 (R. 334).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Questions Presented" and "Petitioner's Position" (*ante*, pp. 7-11 and pp. 11-16).

SUMMARY OF ARGUMENT

The argument is summarized under the heading "Petitioner's Position" (*ante*, pp. 11-16), and in the "Subject-Index" (*ante*, pp. i-vi).

ARGUMENT

FIRST

ACT NO. 33 AND ACT NO. 47 OF THE SPECIAL SESSION OF 1935 OF THE LEGISLATURE OF PUERTO RICO ARE BOTH VALID STATUTES.

Point I.

The Legislature of Puerto Rico is vested by the Organic Act with "all local legislative powers", to "extend to all matters of a

legislative character not locally inapplicable", including power "to * * * * alter, amend, modify or repeal any and all laws and ordinances of every character now in force in Puerto Rico insofar as such alteration, amendment, modification or repeal may be consistent with the provisions of this Act" (Organic Act, Secs. 25 and 37; Appendix, *infra*, pp. 70-71), save only as restricted by other acts of the Congress.

Point II.

This comprehensive grant of "all local legislative powers" confers upon the legislature of Puerto Rico substantially all of the local legislative powers customarily exercised by the legislatures of the States. (*People of Puerto Rico* v. *Shell Company*, 302 U. S. 253, 260-261.)

> "These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, * * * the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; * * * **'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'.** * * * This court, speaking of this typical general provision * * * said that, with the exceptions noted in the provision itself, **'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State'".** (*People of Puerto Rico* v. *Shell Co., supra*, 302 U. S., at pp. 260-261; *emphasis supplied*).

A. The Congressional grant of "all local legislative powers" extends to all "rightful subjects of legislation", the general scope of which is to be determined

> "by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represent" (*People of Puerto Rico* v. *Shell Co., supra*, at p. 261; citing and quoting *Maynard* v. *Hill*, 125 U. S. 190, 204).

Point III.

This broad grant by the Congress to the Puerto Rican Legislature of "all local legislative powers" is limited only by such explicit limitations as are expressed in the Organic Act itself or in other acts of the Congress.

A. *There is no implied limitation against legislation in the same field in which the Congress has chosen to legislate directly,* so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court has expressly so held in the *Shell Company* case. The Court there said (*People of Puerto Rico* v. *Shell Co., supra,* 302 U. S. 253, 265):

> "3. In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act, which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences likely to ensue from the duplicate exercise of it, which requires an implication to that effect."

B. This rule is *equally applicable whether* the Congressional legislation in the same field be contained in *the Organic Act* itself [or in an act, such as the Joint Resolution No. 23 of the Congress of May 1, 1900 (Appendix, *infra,* p. 69), manifestly quite directly related to the Organic Act and intended, in effect, to operate as a part

of it], *or in some other act of the Congress* "not locally inapplicable" within the meaning of section 9 of the Organic Act (Appendix, *infra*, p. 70), and therefore having, as directed in that section, "the same force and effect in Puerto Rico as in the United States."

C. *There is no difference, as to their effect and operation in the Island, and their complete effectiveness there for all purposes, between provisions of the Organic Act and those contained in any other act of the Congress running to the Island.* All alike are enacted by the Congress, exercising "plenary" legislative power in the Territory (*El Paso & N. E. Ry. Co.* vs. *Gutierrez, supra*, 215 U. S. 87, 94-95, 97), in pursuance of its constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Const., Art. IV, Sec. 3, cl. 2); and, like every act of the Congress, wherever operative at all, they are all alike "Laws of the United States", and, as such, "the supreme Law of the Land" (Const., Art. VI, Cl. 2).

D. There is no express limitation against insular legislation supplementing or implementing acts of the Congress, enacting penalties, or providing remedies in the insular courts; and no such limitation is to be implied.

There is no suggestion of any such limitation being intended in the rule as it was laid down by this Court in the *Shell Company* case as above quoted. There is in that case an express finding (302 U. S. at p. 259), that the federal anti-trust acts extend to Puerto Rico and are in full force there. Nevertheless, it was there held (overruling the decisions both of the Circuit Court of Appeals and of the Supreme Court of Puerto Rico) that the manifest fact that the local anti-trust law enacted by the Legislature of Puerto Rico was legislation "in the same field", in which the Congress had itself di-

rectly legislated by the federal acts, did not invalidate the local Puerto Rican statute; *although that statute expressly provided remedies in the local insular courts for its violation in cases which would also constitute violations of the federal anti-trust statutes* [of violations of which the Congress had there expressly directed cognizance to be taken by the federal courts; Sherman Act, Sec. 4; Clayton Act, Secs. 4, 15, 16].

E. *The decision of this Court is broad and sweeping in this respect.* Under it, no distinction can be made as to whether the Congress, in choosing to legislate in this particular "field of legislation", has chosen to do so in the Organic Act or other closely related legislation, or in a separate act operative within Puerto Rico. All alike constitute Congressional legislation operative within the Island as "the supreme Law of the Land"; and, with relation to all alike, the rule declared by this Court is operative that (in the absence of express Congressional direction to the contrary) no implied limitation is intended by the Congress, by the mere fact that it has chosen itself to legislate in that same field, upon the broad and unlimited powers which by the Organic Act it has chosen to confer upon the insular Legislature, of "all local legislative powers" [so long, only, as the insular legislation *does not conflict* with any Act of Congress]. As MR. JUSTICE SUTHERLAND well phrased it in the opinion of this Court above quoted, and as quoted in the opinion of the insular Supreme Court in the present case (302 U. S. at p. 261; *quoted by the insular court*, R. 299):

> "The power being given without express limitation, a conclusion that the present exercise of the power is precluded by the existence of Section 3 of the Sherman Act" [*or by the existence of any federal act in the same field of legislation in question in any particular case, such as this Joint Resolution of May 1, 1900, with which we are here immediately concerned*] "must rest upon the assumption

that a congressional statute penalizing specific local behavior and a statute of Puerto Rico to the same effect cannot coexist. With due regard to the status of the territory, the character of its established government, the positive terms of the congressional grant of power, and the lack of conflict between the two acts, that assumption must be rejected."

F. This rule is, of course, equally applicable with relation to the provisions of section 3 of Joint Resolution No. 23 of the Congress, of May 1, 1900, limiting land tenure in the Island by corporations "authorized to engage in agriculture", "to the ownership and control of not to exceed 500 acres of land", as it is to the restrictive provisions of the federal anti-trust acts, the Sherman Act and the Clayton Act, which, under the decision of this Court in the *Shell Company* case, are operative in Puerto Rico [302 U. S., *supra*, at pp. 257-259] equally with the provisions of this Joint Resolution No. 23. Just as, with relation to the federal anti-trust acts operative in the Island, so also with relation to this Joint Resolution No. 23 likewise operative there, it is competent for the local legislature, in the exercise of the broad and unrestrictive grant of "all local legislative powers" conferred upon it by the Congress, to supplement, and to implement, the federal statutes by enacting suitable penalties and providing the procedural means for their enforcement, so long as the local legislation does not conflict with the federal legislation.

G. And so it may to that end "*adopt by reference*" the federal act, "the details of which, instead of being recited, are adopted by reference" [*People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. at p. 266], and make it the basis of proceedings under its own local statutes, in its own insular courts. (*Confer*, *infra*, Point V.I, pp. 29-32.)

H. Of course, insofar as any local legislation might be found to be in direct conflict with federal legislation, the local legislation would have to fall; would be simply void, as in conflict with "the supreme Law of the Land", "the Laws of the United States", enacted by the Congress and operative in the Island.

I. But the fact that the local legislation provides remedies in the insular courts does not in itself constitute any conflict with the federal legislation.

This was expressly ruled in the *Shell Company* case, where it was said (302 U. S. *supra*, at pp. 262-263):

> "This comprehensive grant of legislative power by Congress plainly recognizes the great desirability of devolving upon the local government the responsibility of searching out local offenses and prosecuting them in the local tribunals. The insular Supreme Court in this case declared in emphatic terms the wisdom of such local control in respect of the matter dealt with by the act in question. Although striking down, with evident reluctance, the act as invalid, that court said: 'The right of the Insular Legislature and officers to prosecute and punish such monopolies as may be set up within our jurisdiction is really inestimable. It was so understood by our Legislature when it took upon itself to legislate on the subject. This is a wholesome and necessary legislation that should be enforced through the insular courts. It must be admitted that The People of Puerto Rico has a special interest in prosecuting before the courts those citizens who violate its own laws. No matter how interested the National Government may be in prosecuting such offenses, instances might occur where the latter would pass unnoticed by the federal officers, or where, for some reason or other, such officers might not display the same activity and interest that is to be expected from the local officials.'
>
> "3. In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of

> Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest." * * * * (*Confer, ante*, Point III-A, p. 19.)

J. A real "*conflict*" between the federal and the Territorial statutes, in the sense we are here considering, would involve some *conflict of duties* imposed upon the corporation by the two laws.

Neither this Court nor the Congress has ever intimated that it considered the mere implementing of the federal act by the insular statute as creating any "conflict" between them. "Conflict" in this sense has always been some substantial, substantive thing *relating to the rights or duties or liabilities of the citizen*. This Court has defined such a real "conflict", in its opinion in *Gulf, Colorado & Santa Fe Ry. Co.* vs. *Hefley*, 158 U. S. 98, 103:

> "The question is * * * *whether their enforcement may expose a party to a conflict of duty*. It is enough that the two statutes operating upon the same subject matter *prescribe different rules*. In such case one must yield, and that one is the State law." (*Italics supplied.*)

That is the test. It is not a procedural matter; but is one of substantive law: of the rights and duties and liabilities of the citizen.

K. It follows that this insular legislation does not amount to "amending" or attempting to "amend" the Act of Congress; and that the majority of the Circuit Court of Appeals were in error in thinking that it does (R. 321, 322 *et seq.*). The cases they cite do not bear out their opinion. [*Territory of Nebraska* vs. *Lockwood*, 3 Wall. 236; *Auk Bay Salmon Canning Co.* vs. *United States*, 300 Fed. 907; *Gallardo* vs. *Porto Rico Railway, Light & Power Co.* (C.C.A.-1), 18 F. (2d) 918; *People of Puerto Rico* vs. *Torres*, 28 P. R. Rep. 783]. So far as in

point here at all, those cases hold only that [*of course*] the Territorial legislature may not change or really "amend" any act of the Congress; and, hence, that any statute of the Territorial legislature actually *in conflict* with an act of Congress is ineffective and void, in so far as it is in conflict with the federal statute. No one disputes this.

L. The question in every case is simply whether or not the Territorial statute actually is in conflict with the act of Congress. In the present case there is no conflict. Under the rules established by this Court in *Gulf Colorado & Santa Fe Ry. Co.* vs. *Hefley*, above quoted, and in the *Shell Co.* case, *supra*, the fact that the local statute provides means for carrying the federal act into effect, in the local courts, does not constitute any conflict with the federal act. To the exact contrary, in the present case, the local statute was in reality, and very plainly, enacted in direct obedience to the Congressional will, and to carry the Congressional intent into effect.

Point IV

The Supreme Court of Puerto Rico is a "court of the United States."

A. The majority opinion of the Circuit Court of Appeals says (R. 325) that this insular Act No. 33, in conferring "jurisdiction to impose penalties for violations of federal laws upon insular courts", "violates the express provisions of federal laws"; and cites the provision of Section 256 of the Judicial Code (28 U. S. Code, 371) that:

> "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: * * *
>
> "Second:—Of all suits for penalties and forfeitures incurred under the laws of the United States."

B. *But that overlooks three things:*

FIRST. Section 256 of the Judicial Code constitutes a delimitation or demarkation of the line of jurisdiction between the *"courts of the United States"* on the one hand and the *"courts of the several States"* on the other hand; that is to say, between the courts instituted by the different sovereignties; the "courts of the United States" instituted under the sovereign power of the federal government, on the one hand; and, on the the other hand, the "courts of the several States" instituted by the several sovereign States of the Union under their inherent sovereign powers, wholly independently in this respect of the sovereign powers of the federal government.

That has nothing whatever to do with any delimitation, as among themselves, of the respective powers of the different courts instituted by the Congress within a Territory such as Puerto Rico, all of which alike derive their powers from the Congress, and all of which alike act by the authority of the same sovereignty, that of the federal government of the United States. *Grafton* vs. *United States*, 206 U. S. 333, 354-355; *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 264-266.

SECOND. The Congress has itself recently defined the term **"courts of the United States"** as including (Sec. 5, Act of August 24, 1937, 50 Stat. 751, 753):

> "the courts of record of Alaska, Hawaii, and **Puerto Rico**, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States".

While that definition of the term "courts of the United States" is prefaced, in Section 5 of the Act of August 24, 1937, with the phrase, "As used in this Act", yet it is, manifestly, *a correct definition of the term for all*

purposes. It includes all those courts of record which are instituted under the direct sovereignty of the federal government, alike in the continent and in the organized Territories of Alaska, Hawaii and Puerto Rico.

It appears to be directly applicable here, as indicating the sense in which the Congress used the same term, "courts of the United States", in Section 256 of the Judicial Code; and thus reinforces the intent manifest on the face of that section, as above pointed out, to use the term there, simply as in contradistinction to the term "courts of the several States," that is to say, the courts of the several sovereign States of the Union instituted under their independent sovereignties; and not at all with reference to any distinction between the different classes of "courts of the United States" instituted by the Congress within a Territory, such as Puerto Rico, as among themselves.

THIRD. **Within the meaning of this phrase** "courts of the United States", as used by the Congress both in Section 256 of the Judicial Code and also in Section 5 of the Act of August 24, 1937, **the insular courts of Puerto Rico, including the insular Supreme Court of Puerto Rico, are "courts of the United States",** just as much as is the so-called "District Court of the United States for Puerto Rico", and in exactly the same sense.

They are all alike instituted by the Congress, and by the same Act [the Organic Act for Puerto Rico of March 2, 1917, Secs. 40 and 41, continuing the analogous provisions of the earlier "Foraker Act", Secs. 33, 34]. This court has consistently held that the so-called "District Court of the United States for Puerto Rico" is not a constitutional court of the United States, but is only a Congressional court, in reality simply another type of insular court, instituted by the Congress, equally with the other insular courts, under Article IV, Sec. 3, clause 2 of the Constitution, giving the Congress power "to dis-

pose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". *Romeu* vs. *Todd*, 206 U. S. 358, 368; *Balzac* vs. *Porto Rico*, 258 U. S. 298, 312.[5] In the latter case this court said (at p. 312):

> "The resemblance of its jurisdiction to that of true United States courts in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court."

C. It follows, therefore that, since the insular Supreme Court of Puerto Rico is a "court of the United States" instituted under the direct sovereignty of the federal government, and is as much a "court of the United States" as is the so-called "federal court", the "District Court of the United States for Puerto Rico", or any other court sitting within the boundaries of the Territory, *the Legislature of Puerto Rico*, instituted by the same sovereignty and clothed by it with "all local legislative powers," *could validly vest that court with jurisdiction in cases of violation of these federal laws* named in these insular jurisdictional statutes, Acts Nos. 33 and 47 of 1935. [Even aside from the "adoption by reference" of the federal statute as a part of the local insular law; *Point VI, infra*, pp. 29-32].

Point V

In the present case it is clear that the Joint Resolution of the Congress No. 23, approved May 1, 1900, limiting to five hundred acres the amount of land in Puerto Rico which might be owned or controlled by a corporation engaged in agriculture, and requiring that limitation to be expressed in the articles of incorporation or charter of every such corporation, is an expression of the public policy of the United States, and of the intent of the Congress that it should become a fixed rule of property in the Island, and a part of the basic law of the land there.

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[5] And see likewise, as to Hawaii: *Mookini* vs. *United States*, 303 U. S. 201, 205.

And hence a fixed rule of public policy in the Island.

The insular Supreme Court made a study (R. 291-297) of the historical facts surrounding the enactment of the Joint Resolution No. 23 of the Congress, of May 1, 1900, and of its emphatic restatement in Section 39 of the present Organic Act of March 2, 1917; of the statements of Congressional leaders of both parties in the course of the debates leading up to the enactment of the "Foraker Act" of April 12, 1900 (c. 191, 31 Stat., 977) and of the Joint Resolution here in question, passed only eighteen days later, May 1, 1900; and of various acts of the Legislature of Puerto Rico and earlier decisions of the insular Supreme Court itself, and reports of the Governor, and of a report of the Secretary of the Interior of the United States, and also of various statistical data relating to the Island, all tending to indicate a general understanding over this whole period of time of the public policy embodied in the Congressional legislation, and that it was a part of the fixed public policy of Puerto Rico.

We particularly invite attention to this portion of the insular court's opinion.

Point VI

The Legislature of Puerto Rico possesses the power to adopt by reference a statute of the Congress as a part of the local statutes of Puerto Rico, without repeating the details of the federal statute at length.

A. *And contrary-wise,* as this court pointed out in the *Shell Company* case, *supra,* the Congress may, and not infrequently has, adopted by reference State or Territorial statutes as parts of the body of the federal statutory law, without reciting the details at length. This court, in the *Shell Co.* case, in construing and applying its earlier decision in the *Grafton* case [*Grafton* vs. *United States,* 206 U. S. 333], and in pointing out the applicability of the doctrine of that case to Puerto Rico, said (*Peo-*

ple of Puerto Rico vs. *Shell Co., supra*, 302 U. S. 253, 265-266):

> "An attempt is made to distinguish the *Grafton* case on the ground that but one statute was there involved—namely, the statute of the Philippine Islands—and that both the general court martial and the Philippine court undertook to enforce that statute. Obviously, that view is incorrect. The court-martial proceeding was not to enforce the Philippine legislation, but to enforce the 62nd Article of War; and that article was none the less a federal law, distinct from the local law, because it might be necessary to refer to the local law to determine whether the act charged against the soldier was embraced by the term 'crimes' in the 62nd Article. This is well illustrated by section 289 of the Criminal Code (18 U. S. C. Section 468), which, in respect of offenses committed upon places subject to the exclusive jurisdiction of the United States within the limits of a state or organized territory or district, makes applicable the laws of such state, territory or district in respect of such offenses. Prosecutions under that section, however, are not to enforce the laws of the state, territory or district, but to enforce the federal law, the details of which, instead of being recited, are adopted by reference. See *United States* v. *Press Publishing Co.*, 219 U. S. 1".

B. The 62nd Article of War [Rev. Stat., Sec. 1342, Art. 62; now reenacted, with some changes, as the 96th Article; Act of June 4, 1920, c. 227, subchapter II, section 1, 41 Stat., at p. 806; 10 U. S. Code 1568] read, as it stood at the date of the decision in the *Grafton case*, in 1907:

> "Art. 62. **All crimes** not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, **are to be taken cognizance of by a** general, or a regimental, garrison, or field-officers' **court-martial**, according to the nature and degree of

the offence, and punished at the discretion of such court." (*Emphasis supplied.*)

The words "*all crimes*" are the words that this Court held in the *Shell Co.* case, as above quoted, "*adopted by reference*" the laws of the various States and Territories in force when and wherever the offense might have been committed, of which the court-martial was called upon to take cognizance in any particular case.

C. As this court pointed out in the *Shell Co.* case, as above quoted (302 U. S. at pp. 265-266), as well as in *United States* v. *Press Publishing Co.*, 219 U. S. 1, 8, there cited, the Congress has similarly, by Section 289 of the Criminal Code, adopted by reference the varying laws of different States and Territories, without reciting them in detail, for application, *pro tanto*, as parts of the federal Criminal Code itself, within the respective federal reservations lying inside of the outer territorial boundaries of the several States and Territories.

D. Again, the Congress similarly, over a century ago, when making provision for the District of Columbia, adopted by reference the common law and rules of procedure of the State of Maryland, as then existing, for that portion of the District which had been ceded by that State; and similarly adopted the then existing laws and rules of procedure of the State of Virginia for that portion of the District ceded by that State; in each case without reciting the details at length. [Act of February 27, 1801, c. 15, 2 Stat. 103].

E. And so likewise the Congress, in the first Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900, set the example for the Legislature of Puerto Rico in this respect. In that Act, the Congress, as hereinafter more at length pointed out, (*infra*, Point IX, pp. 35-36), in defining the jurisdiction and prescribing the forms of procedure of all the various courts of the Island, did so by

merely *adopting by reference* the General Orders of the Military Governor of the Island, then in force, *without copying them out at all* (Sec. 33, "Foraker Act", Appendix, *infra*, pp. 67-68).

F. There appears to be no reason why the Legislature of Puerto Rico, in the exercise of the delegation to it by the Congress by Sections 25 and 37 of the Organic Act of "all local legislative powers", may not, in this respect, legislate in like manner as the Congress itself; or may not thus,—without having necessarily always to set out the details in full,—*adopt by reference*, and thereby make a part of its own statutory local law, any act of the Congress which is already of its own force in effect in the Island as a part of the body of the "supreme Law of the Land" there. [As every enactment of the Congress, applicable in the Island, necessarily is, under Article IV, Section 3, Clause 2, of the Constitution]. The Act of Congress being already in force in the Island, there would seem to be no reason why the Legislature should not simply refer to it and adopt it by reference as a part of its own statute, without necessarily reciting it in full, or formally reenacting it at length; just as the Congress itself does in adopting by reference existing statutes of the States and Territories.

G. Particularly would this seem to be true in view of the fact that the Acts of Congress thus adopted by reference by the Legislature are, as pointed out in the *Grafton* case and the *Shell Co.* case (*Grafton* v. *United States*, *supra*, 206 U. S. 333, 354-355; *People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. 253, 264-266) *enactments of the same sovereignty* under which the Legislature itself acts.

Point VII

The Legislature has effectually adopted the "500 acre law" as a part of the local statutory law of Puerto Rico.

A. The Legislature may validly "adopt by reference" any part of the federal statutes already in force in the Island, as a part of the local statute. [Point VI, *ante*, pp. 29-32]. The Congressional Joint Resolution of May 1, 1900, and the Organic Act, were both directly applicable to the Island, and were in force there from the dates of their enactment by the Congress.

B. So much of Section 3 of the Joint Resolution (Appendix, *infra*, p. 69) as prohibits agricultural corporations from being authorized or permitted to own or control land in the Island, in excess of 500 acres, was specifically adopted by the Legislature as a part of the local statutes by subparagraph 4 of Section 3 of the Corporation Law of 1902, and by the revision of it March 9, 1911 (Appendix, *infra*, p. 75; *ante*, p. 3), by the provision that:

> "Sec. 3. Every corporation has power.
> "1. To have succession * * *.
> "4. To acquire and to hold * * * * *Provided, however,* **That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred."**

C. This adoption was long before the date, April 21, 1927 (*Complaint*, R. 2, 44), when this respondent was organized under the local "Corporation Law" of Puerto Rico, and in compliance with it, embodied that 500 acre restriction in its own Articles of Incorporation.

D. This *adoption by reference* of Section 3 of the Congressional Joint Resolution as a part of the body of the local statutes is equally applicable to the second paragraph of Section 39 of the Organic Act of 1917 for the Island; which, in so far as we are here concerned, is in effect simply a re-enactment and emphasizing of the Joint Resolution of 1900.

E. Since [insofar as this question is concerned] *the phraseology in which the Legislature expresses its will is immaterial,* so long as its intent is clear, it follows that it is really immaterial whether the Legislature first formally adopts the section of the federal act as a part of the local statute, and then formally proceeds to base its further local legislation upon the section thus formally adopted, or, by a short cut, without that formality, simply bases its local legislation upon a portion of the federal statutes already in force in the Island. The effect is the same, either way. It amounts to the adoption, *pro tanto,* of the federal statute "by reference". If the intent of the Legislature is clear, there would seem to be no objection to the short cut.

F. It follows that,—even aside from the earlier direct adoption of the Congressional Joint Resolution by the provisions of Section 3 of the local Corporation Act, as above pointed out,—the action of the Legislature in Acts Nos. 33 and 47 of 1935 in taking the short cut, and thus directly basing jurisdiction of the insular Supreme Court upon violations of these federal statutes then in force in the Island, was perfectly valid; and amounted, in effect, to an adoption by reference of those provisions of the federal statutes as parts of the local statutory law.

G. It follows that those statutes are valid.

H. And hence that the insular Supreme Court had jurisdiction of this proceeding.

SECOND

THESE STATUTES ARE APPLICABLE TO THIS CORPORATION.

Point VIII

Among the powers necessarily implied in the grant of "all local legislative powers" to the insular Legislature, in accordance with the universal understanding and the universal practice of State legislatures, **are the powers to charter private corporations, and to provide for their incorporation by general corporation laws; to provide what their charters or articles of**

incorporation shall contain; what property they may hold or own or use; what powers may be given to them under their articles of incorporation, or they may exercise, **and with what limitations; to prescribe the procedural means for confining them within the exercise of their charter powers,** and the penalties for violations of the limitations of their charters, and for *ultra vires* acts; to provide for their dissolution and the winding up of their businesses and the distribution of their properties; and in general to make regulations concerning them, of every kind.

These are all well recognized legislative powers universally exercised by the legislatures of the States.

Point IX

Likewise, among the legislative powers habitually exercised by the legislatures of the States, are the powers (subject to whatever general provisions may be made in the local State constitution) **to prescribe the forms of action and modes of procedure in the courts, and to change them from time to time.**

A. In accordance with this usual custom, the Congress, both in the former Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900 (Sec. 33; Appendix, *infra*, pp. 67-68), and likewise in the present Organic Act, the "Jones Law" of March 2, 1917 (Sec. 40, Appendix, *infra*, p. 71), gave broad powers in this respect to the former "Legislative Assembly" as well as to the present "Legislature" of Puerto Rico. By section 33 of the "Foraker Act", "the courts and tribunals of Porto Rico as already established" [by the Orders of General Davis, the military Governor for the United States] "and now in operation", including the insular Supreme Court and the district courts [*Cf. General Orders of Brig. Gen. Davis, Military Governor*, Appendix, *infra*, pp. 68-69] were continued, with the provision that the Chief Justice and Associate Justices of the insular Supreme Court and its Marshal should thereafter

be appointed by the President, by and with the advice and consent of the Senate of the United States, and that the Legislative Assembly, besides being empowered to direct how the other officials and attachés of the courts should be chosen,

> "shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attachés for each, **their jurisdiction, their procedure,** and all other matters affecting them." (*Emphasis supplied*)

B. And by Section 40 of the present Organic Act of March 2, 1917, the courts, as existing at that date, with their jurisdiction and forms of procedure, are likewise continued, with the similar provision (*Appendix, infra*, p. 71) that

> "the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico".

Point X

Pursuant to the legislative powers thus conferred upon it, both the general powers and the specific powers with relation to the courts and their jurisdiction and forms of procedure, **the former Legislative Assembly of Puerto Rico enacted a general corporation law, March 1, 1902** (Laws of 1902, pp. 73-76; Rev. Stats. and Codes of 1902, Civil Code, Title II, Sec. 32, *et seq.*, pp. 759-796), **and revised it by Act No. 30 of March 9, 1911** (Laws of 1911, pp. 87 *et seq.*; Comp. of Rev. Stats. and Codes, 1911, Pars. 407-491; Appendix, *infra*, pp. 74-78).

And likewise, it enacted "An Act Establishing *'Quo Warranto'* Proceedings", March 1, 1902 (Laws of 1902, pp. 67-68; Rev.

Stats. and Codes of 1902, Pars. 779-787, pp. 282-284; Rev. Stats. and Codes, 1911, Pars. 1319-1327; Appendix, *infra*, pp. 72-73).

A. By the corporation law, as revised by Act No. 30, *supra*, of March 9, 1911 "An Act To establish a Law of private corporations" [*long before the organization in 1927 of the corporation which is the respondent here*], provision was made for the organization of private "domestic corporations", for their articles of incorporation and other matters relating to them, including their powers, the duration of the corporate existence, and their dissolution. Sections 3 and 4 of that Act, relating to their corporate powers (Par. 409, Comp. of Rev. Stats. and Codes, 1911; Appendix, *infra*, pp. 75-76; *ante*, pp. 32-33, provides:

> **"Sec. 3. Every corporation has power:**
>
> 1. To have succession * * *
>
> 4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: ***Provided, however,*** **That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.**[6]
>
> 5. To appoint the officers and agents * * * *
>
> 7. **To dissolve,** either voluntarily or **by operation of law** and in accordance with the provisions of this act.
>
> 8. To possess and exercise, **subject to the restrictions**

[6] The Legislature here *"adopts by reference"* Section 3 of the Congressional Joint Resolution as a part of the local statutes of Puerto Rico. *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 266 [*Confer, ante*, Point III-G, p. 22, and Point VII-B, p. 33].

and liabilities contained in this act and in the Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this act and of the Civil Code.

"Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the preceding section." (*Emphasis supplied*)

B. By sections 2 and 6 of the *"Quo Warranto" law of* March 1, 1902, it was provided (Appendix, *infra*, p. 72):

"Section 2.—That in case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or *exercises rights not conferred by law;* The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of 'Quo Warranto' * * *

"Section 6.—In case any person or corporation against whom any such petition is filed, or" [is] "adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or is [its] franchise, and fine such person or corporation for * * * unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: * * *" (*Emphasis supplied*)

Point XI

A.—With those insular statutes in force (both the corporation law and the "*quo warranto*" law), the defendant-respondent corporation was organized as a "domestic corporation" under the laws of Puerto Rico, on April 21, 1927, and in section 4 of its

"Articles of Incorporation" (R. 6-8) it provided, in the statement of its corporate powers, in accordance with the limitation on the corporate powers of domestic agricultural corporations of Puerto Rico, contained in sub-paragraph 4 of section 3 of the local insular corporation law of March 9, 1911, as above quoted [as well as in accordance with the requirement and limitation contained in section 3 of Joint Resolution No. 23 of the Congress of May 1, 1900, *supra*], that the "aims and purpose for which this corporation is organized" are, among other things (*Complaint, "Exhibit A,"* R. 6-8):

> (c) To build up, * * * *, and manage undertakings whose purpose and object is the planting, cultivation and harvesting of sugar cane and the manufacture and sale of sugar, * * * *.
>
> (d) To raise, develop, purchase, own, and sell cattle, sheep and horses. To engage in agriculture in general. To plant, cultivate and harvest sugar crops, * * *
>
> (f) To purchase, lease, own, * * * estates and plantations located within or without the Island of Puerto Rico * * *; provided, however, that the rights of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America. (*Emphasis supplied.*)

That was the statement of the incorporators themselves. *These articles became a part of the corporation's contract with the government.*

B. Nevertheless, the defendant-respondent corporation, in direct violation of the restriction contained in the last above quoted *proviso* in subparagraph "(f)" of section 4 of its own Articles of Incorporation, thus voluntarily adopted by it in accordance with the laws and requirements both of the insular Corporation Law enacted by the Legislature of Puerto Rico and also of section 3 of the Joint Resolution of the Congress of May 1, 1900, proceeded to purchase and to cultivate

"in agriculture" an acreage of land in Puerto Rico very far in excess of 500 acres.

C. Neither the answer (R. 89-98), nor anything said in any of defendant's motions, or elsewhere, before the insular Supreme Court, nothing whatever in the case indicates any purpose, or attempt, on the part of this corporation to divest itself of any portion of the land it holds and uses for agricultural purposes, in excess of 500 acres, in violation of its own Articles of Incorporation; nor to discontinue its use for agriculture.[7] To the contrary, its manifest purpose is to continue to hold all of this great tract of land, and to continue to use it for agriculture, as hitherto, in direct violation of its own Articles of Incorporation, as well as of the local corporation law of Puerto Rico, and also of the Joint Resolution of the Congress of May 1, 1900.

D. In this respect this defendant-respondent corporation puts itself into substantially the same position, and attitude, taken by the Pullman Company in the great *quo warranto* case in the Supreme Court of Illinois, in which that court entered its decree, back in 1898, compelling the Pullman Company to divest itself of the ownership and control of the town or city of Pullman, Illinois, with all of the residences, schools, churches and municipal facilities which the Company had built and owned and maintained [and paid taxes upon] for many years for the residences and convenience of its own employees, but in doing which, as the court there held, it had exceeded the corporate powers granted to it by its own Articles of Incorporation under the laws of the State of Illinois.

The Illinois Supreme Court there said, in the course of a long and careful opinion (*People* v. *Pullman Palace Car Co.*, 175 Ill. 125, 163-165):

"In the case at bar the appellee is conceded to be

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[7] Defendant-respondent introduced no evidence at the trial, but contented itself with a motion to dismiss, at the conclusion of the plaintiff's case (*ante*, pp. 6-7; R. 121-129).

a corporation *de jure*, and the complaint is that it had assumed and exercised, and is assuming and exercising, powers not granted by its charter or implied by law. We find from its pleas the corporation is without lawful authority to perform the acts complained of; that it entered upon the performance of such acts in 1880 or 1881, in pursuance of a fully matured plan; that it has since continuously engaged in this unjustifiable undertaking, and was so engaged when this information was filed, and that it owns a tract of land * * * . ***The usurpations of the corporation are not only those of the past but also those of the present, and its plea admits it contemplates a repetition of the offenses in the future.***

"Our interpretation of the law, as applied to facts * * * , is, that the appellee corporation, at and before the time of filing the information, was exercising powers and performing acts not authorized either by the express grant of the charter or any implication of law; and further, that by some of such unauthorized acts * * * tend * * * to remove real estate from the operation of our Statute of Descent and place the title thereto in a corporation having perpetual succession and unending existence, and thereby withdraw it from the channel of trade and commerce; to create monopolies * * * , and that its acts are opposed to good public policy. **We do not think the demand of the sovereign that usurpations so clearly antagonistic to good public policy shall be restrained can be defeated by any imputation of *laches*, or upon the ground that acquiescence is to be inferred from the failure to invoke the aid of the courts at an early day.**" (*Emphasis supplied.*)

THIRD

IN ANY EVENT SO MUCH OF ACT NO. 47 IS VALID AS VESTS ORIGINAL JURISDICTION IN THE SUPREME COURT OF PUERTO RICO IN CASES OF CORPORATE VIOLATIONS OF INSULAR STATUTES.

Point XII

Act No. 47 vests the Supreme Court of Puerto Rico with original jurisdiction in *quo warranto* proceedings brought in the name of

The People of Puerto Rico in cases of corporate violations of the *insular statutes,*

> "whenever any corporation * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico *or of any of its statutes*". (Appendix, *infra*, p. 79).

A. The latter provision thus vesting original jurisdiction in the insular Supreme Court in the case of a corporation's violation "OF ANY OF ITS STATUTES",—that is to say, in case of the violation of any of the *insular statutes* of Puerto Rico,—is wholly independent of the other provision, with which it is coupled in the statute as above quoted, vesting jurisdiction in cases of violations of "the Organic Act of Puerto Rico". *They are two entirely separate grants of jurisdiction.* Although frequently, as in the present case, the same act of a corporation,—as, here, the holding and devoting to agricultural purposes of a tract of land vastly in excess of 500 acres,—may be at the same time at once a violation both of the insular statutes and also of the Organic Act, nevertheless there are here two separate and distinct grants of jurisdiction; the one in cases of violation of the Organic Act, and the other in cases of violation of the insular statutes.

B. The grant of jurisdiction in cases of violation of insular statutes is complete in itself, wholly independently of the other grant. This is manifest on the face of the statute; and was, in effect, recognized in the majority opinion of the Circuit Court of Appeals (R. 326)[8].

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[8] Where the majority opinion refers to it as

> "a provision in Act No. 47, *supra*, Sec. 2, which provides, that, if any corporation exercises rights not conferred by law, or performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or any of its statutes, the Attorney General or any district attorney may file a petition in the Supreme Court of Puerto Rico for an information in the nature of *quo warranto*."

C. This provision vesting jurisdiction in cases of violation of insular statutes is complete in itself, and can stand independently of the coordinate provision vesting jurisdiction in cases of violation of the Organic Act.

The majority opinion of the Circuit Court of Appeals raises a doubt on this point [*but does not decide it*]. It says (R. 328-329):

> "Since Act No. 47 is claimed by the defendant to be a void act because it attempted to amend a *federal*[9] statute * * *, and the entire Act is therefore rendered void, the issue is whether a valid complaint can be based thereon for a violation of a part of the Act which it now claims to be valid, if taken by itself, no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act. The real issue in this case, therefore, is not whether a valid complaint could have been made under Act No. 47 but whether one was made, assuming Act No. 47 can be held to be a valid act."

D. There is no sound basis for any doubt of the validity of this part of this statute. As JUDGE PETERS points out in his dissenting opinion (R. 332), this provision of Act No. 47 could stand as a separate act by itself, under the established rule of this court as stated in the cases which JUDGE PETERS there cites. *Champlin Refining Co.* vs. *Corporation Commission of Oklahoma*, et al., 286 U. S. 210, 234; *El Paso & N. E. Ry. Co.* vs. *Gutierrez*, 215 U. S. 87, 96-97; as well as earlier cases. *Connolly* vs. *Union Sewer Pipe Co.*, 184 U. S. 540, 565; *Pollock* vs. *Farmers Loan & Trust Co.*, 158 U. S. 601, 635; *Reagan* vs. *Farmers Loan & Trust Co.*, 154 U. S. 362, 395-396; *Field* vs. *Clark*, 143 U. S. 649, 695-696.

The rule, as stated by this court in the *Champlin Refining Co.* case (286 U. S. at p. 234), is:

> "The unconstitutionality of a part of an Act does

[9] Italics are the court's.

not necessarily defeat or affect the validity of its remaining provisions. *Unless it is evident that the legislature would not have enacted those provisions which are within its power,* independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." (*Italics supplied*)

E. Judge Peters correctly said (*Dissenting opinion*, R. 332, *supra*):

> "It seems to be recognized that Act No. 47 confers jurisdiction on the Puerto Rico Supreme Court in *quo warranto*, at least, for violation of local law. It cannot be questioned that there was a violation of local law, both in respect of holding more than the permitted number of acres of land and in exercising powers not given by the articles of incorporation."

F. There is no suggestion in the majority opinion of any belief that the Legislature of Puerto Rico "would not have enacted those provisions which are within its power",—*those vesting jurisdiction in cases of violation of insular statutes*,—"independently of" the balance of the statute vesting jurisdiction in cases of violation of "the Organic Act", even if the Legislature had realized that there was any possible question about the validity of the balance of the act. To the contrary, there appears to be no possible reason to doubt that the legislators would have gone ahead and enacted the provisions vesting jurisdiction in cases of violation of *insular statutes*, independently, if any possible doubt had then been suggested to them of their power to enact the balance of the statute. The majority opinion itself finds (R. 318) the purpose of the Legislature:

> "that the legislature of Puerto Rico enacted several statutes, the common purpose of which was to provide the necessary remedial measures for curbing existing land monopolies and preventing further violations of the provisions of Sec. 3 of the Joint Resolu-

tion No. 23 of the Congress and Sec. 39 of the Organic Act approved March 2, 1917".

With this purpose in mind, can it be doubted that the Legislature, if it had realized that there could be any doubt about its power to vest jurisdiction in the insular Supreme Court by that part of this statute, Act No. 47, which vests such jurisdiction in cases of corporate violations "of the express provisions of the Organic Act of Puerto Rico", would nevertheless surely have proceeded to enact, independently, that portion of the statute which vests jurisdiction in cases of violations of insular statutes, *"of any of its statutes"*,—by means of which the same legislative purpose of "curbing existing land monopolies and preventing further violations" of the Joint Resolution of the Congress and of Section 39 of the Organic Act could be effected, since every violation of the act of Congress by any agricultural corporation in the Island by holding more than 500 acres of land is likewise necessarily also a violation of the insular corporation law requiring that restriction to be placed in its Articles of Incorporation and forbidding the exercise of any powers not authorized by the Articles.

F. It follows that this portion of Act No. 47 [*and independently of any possible question as to the balance of the statute*],[10] is valid. **In and of itself alone, this constitutes a sufficient basis for the jurisdiction of the insular Supreme Court in this case.**

FOURTH

ACT NO. 47 AMPLY VESTS THE INSULAR SUPREME COURT WITH JURISDICTION, NOT ONLY OF THE PROCEEDINGS IN THIS CASE, BUT ALSO TO MAKE THE FINDINGS AND TO ENTER THE JUDGMENT APPEARING IN THE RECORD.

[10] Of course, petitioner, the People of Puerto Rico, believes the entire Act valid [*Ante*, "FIRST," Points I-VII, pp. 17-34].

POINT XIII.

The majority opinion in the Circuit Court of Appeals is clearly in error on this point.

A. The majority opinion in the Circuit Court of Appeals says (R. 328):

> "The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute. Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed. It does not appear, therefore, that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *'ultra vires* act in violation of its articles of incorporation, or of a federal law."

In this, the majority opinion is clearly in error.

B. In the first place, the opinion is in error in saying, as above quoted, that: "The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute"; and also in saying: "Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed".

C. If by these statements it is meant to imply that the insular Supreme Court is a court of limited jurisdiction, or of jurisdiction dependent on statutory definition or limitation, like many inferior courts, then the statement is erroneous. The Congress has not placed any such limitation upon the jurisdiction of the Supreme Court of Puerto Rico. **It is a superior court of general jurisdiction.** As already pointed out (Point IX, *ante*, pp. 35-36) the first Organic Act for the Island, the "Foraker Act" of April 12, 1900 [Sec. 33; Appendix, *infra*, pp. 67-68], vested "the judicial power" "in the courts and tribunals of Porto Rico as already established and now in operation * * * under and by virtue of General Orders No. 118, as promulgated by Brigadier-General Davis, United States Volunteers, August 16, 1899"; Those

courts included the **"Supreme Court of Justice"** constituted by General Orders No. 118, paragraph 2, as "a Judicial Bench for all civil and criminal business" (Appendix, *infra*, pp. 68-69), without any further definition or limitation upon its jurisdiction. The Congress, in thus continuing the existing courts by the "Foraker Act" of April 12, 1900, further provided [*Proviso* to Sec. 33, *supra*; Appendix, *infra*, p. 68] that the "legislative assembly" "shall have authority to legislate from time to time as it may see fit with respect to said courts, * * * their jurisdiction, their procedure, and all other matters affecting them". And the present Organic Act of March 2, 1917, for Puerto Rico, in its turn continues the same courts, including the Supreme Court, by its provision (Appendix, *infra*, p. 71);

> "Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That * * * the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

D. *Likewise the further above quoted statement* in the majority opinion (R. 328, *supra*) that: "It does not appear", "that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *ultra vires* act in violation of its articles of incorporation, or of a federal law", *is clearly erroneous.*

(1) In so far as this statement relates to "an *ultra vires* act *in violation of its articles of incorporation*", it

has no appositeness in this case, *unless* it is intended to be applicable to the particular kind of "*ultra vires* act" alleged in the complaint and here before the court. The particular kind of "*ultra vires* act" alleged in the present case (R. 2-3, 44-45) and found by the insular Supreme Court (R. 304, 305; *ante*, p. 2), is that a domestic agricultural corporation of Puerto Rico, expressly limited by its articles of incorporation to the ownership and control of not to exceed 500 acres of land, in direct defiance of that restriction contained in its own articles, as well as of the restrictive requirements both of the local statutes and also of the federal law in compliance with both of which its articles were adopted, is holding a great tract of land vastly in excess of 500 acres, and devoting it to agriculture, "to the planting, cultivation, and harvesting of sugar cane". The complaint alleges these facts. The insular court has found them [the words "ultra vires" do not appear in the complaint, nor in the insular court's findings or judgment]. The local *quo warranto* law, from its first enactment in 1902 (Appendix, *infra*, pp. 72-73; Secs. 2, 6) contained the provision exposing any corporation which "exercises rights not conferred by law" to ouster from its franchise and to be fined in *quo warranto* proceedings.

(2) And Section 2 of that *quo warranto* law of 1902, as now amended by this Act No. 47 of 1935, expressly vests the Supreme Court of Puerto Rico with original jurisdiction in all such cases, "whenever any corporation * * * exercises rights, performs acts, or makes contracts in violation * * * of any of its statutes" [the local statutes of Puerto Rico].

(3) How then, can the majority opinion of the Circuit Court of Appeals properly say, as above quoted (R. 328, *supra*) that, "It does not appear" that the Supreme Court of Puerto Rico "has been given power to declare a

forfeiture of the property[11] of the corporation and to impose heavy fines thereon" "for an *ultra vires* act in violation of its articles of incorporation",—*at least for the particular kind* of *ultra vires* act alleged, and found by the insular Supreme Court, in the present case; that is to say the kind of *ultra vires* act which amounts to a direct violation and defiance of the insular statutes [as well as of the federal law]?

(4) Likewise, so far as relates to "an *ultra vires* act in violation * * * of a federal law", what is said in the preceding subparagraphs is equally applicable, *mutatis mutandis*.

FIFTH

THE ALLEGATIONS OF THE COMPLAINT OF VIOLATION OF INSULAR STATUTES WERE SUFFICIENT; AND IN ANY EVENT THE JUDGMENT OF THE SUPREME COURT OF PUERTO RICO SHOULD NOT HAVE BEEN REVERSED ON SUCH A QUESTION OF LOCAL PLEADING OR PROCEDURE.

Point XIV.

The allegations of the complaint are sufficient, under the local Code of Civil Procedure of Puerto Rico, to charge violation of the insular statutes, and to give the insular Supreme Court jurisdiction on that ground.

A. The majority opinion in the Circuit Court erroneously holds them insufficient. It says (R. 329):

> "The real issue in this case, therefore, is * * * * whether the complaint in this case sets forth valid grounds for dissolving this corporation through *quo warranto* proceedings authorized under Act No. 47 *and the forfeiture of its property*[12] and the imposing

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[11] It is to be remembered, again, that no forfeiture "*of the property*" is involved in this case; but only of the corporate franchise,—of the right to continue as a corporation.

[12] *Confer* foot-note 3, *ante*, p. 10, and foot-note 11, *ante*, this page.

> of heavy fines. *No specific charge is made in the complaint of a violation of a Puerto Rican statute,* either of Act No. 30 of 1911, or any other local Act. We think, if such was the purpose of the pleader, *the allegation is too indefinite to constitute a good charge* in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines." (*Italics supplied*)

B. But the complaint contains a complete "*statement of the facts constituting the cause of action*".[13] It is clearly sufficient under the local Code of Civil Procedure of Puerto Rico [Secs. 103, 122, 132, 191; Appendix, *infra*, pp. 80-82], and under the established procedure and prior rulings of the insular Supreme Court, to constitute a good charge of violation of the local "Corporation Law", and to sustain these *quo warranto* proceedings.

It states the facts: The corporation's organization for agricultural purposes under the local Corporation Law; that its articles of incorporation contain the required prohibition [*required by the local Corporation Law, as well as by the federal Joint Resolution*] against holding more than 500 acres of land [setting the articles out in full in "Exhibit A" to the complaint, R. 5-14]; that nevertheless it owns, and "applies" to agriculture, lands far in excess of 500 acres, amounting to some 12,188 acres. The relief prayed is (R. 4-5; 46-47)

> "to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises."

C. *While there is no specific allegation of the legal con-*

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[13] Puerto Rico Code of Civil Procedure, Sec. 103, subpar. 2; Appendix, *infra*, p. 81.

clusion of violation of the local Corporation Law under which the corporation was organized; and no specific reference to the *Quo Warranto* Law authorizing these proceedings; yet the complaint *does allege all the facts* necessary to demonstrate violation, and to constitute the basis for these *quo warranto* proceedings.[14]

D. **These allegations are sufficient under the local Code of Civil Procedure of Puerto Rico.** Under that Code, it is not necessary to allege the legal conclusion that the actions set out in the complaint amount to a violation of the insular statutes, or of which particular insular statute, such as the local Corporation Law. Under that code, it is sufficient to allege the facts. The necessary legal conclusions may be drawn by the court.

E. The code provides[15] (Appendix, *infra*, pp. 80-82):

"Section 103.—(426 Cal.) The complaint must contain:

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[14] And it alleges also (R. 3-4, 45-46) that this violation and the ownership of this great tract of land, is in violation of the public policy of the People of Puerto Rico established and reiterated, among other things, by the enactment of these two statutes, Acts Nos. 33 and 47 of 1935, vesting original jurisdiction in cases of such violation in the Supreme Court of Puerto Rico.

[15] Code of Civil Procedure, Act of March 10, 1904 [Rev. Stats. and Codes of Puerto Rico, 1911, Pars. 4985-5406], as revised and re-published with the statutory "Rules for the Printing of the Code", under Act No. 6 of March 31, 1933, Laws of 1933, pp. 194-196, as the present "Code of Civil Procedure, Edition of 1933".

The "Rules" provide, *inter alia*:

"Rule 1.—Each section of the Code of Civil Procedure shall carry in parentheses the section to which it is equivalent in the Code of Civil Procedure of California.

"Rule 2.—At the foot of each section, in English as well as Spanish, shall be noted the jurisprudence of Puerto Rico that has cited, applied, or interpreted said section, from Volume 1 to Volume 44 of the Puerto Rico Reports."

"1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

"2. **A statement of the facts constituting the cause of action,** in ordinary and concise language. (*Emphasis supplied.*)

"3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated."

Section 122 provides that the allegations

"must be liberally construed, with a view to substantial justice between the parties";

Section 142, that:

"The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect";

and Section 191 that, while, if no answer has been filed, the relief granted the plaintiff cannot exceed what he has demanded in his complaint, yet "in any other case" [that is to say, *where, as in the present case, the defendant has filed an answer*], then

"the court may grant him" [the plaintiff] "any relief consistent with the case made by the complaint and embraced in the issue".

F. Printed in the 1933 edition of the Code, under the various sections, in accordance with "Rule 2" of the "Rules for Printing the Code"[16] are various citations to decisions of the Supreme Court of Puerto Rico construing the particular sections, thus in effect indicating the approval or legislative adoption of those judicial interpretations.

G. Among the citations so printed under Section 103 of the Code (Edition of 1933, p. 41) are *Vicenty* vs. *Vazquez*, 11 P. R. Rep. 275, 284; *Ochoa* vs. *Lanza*, 17 P. R. Rep. 398, 406; and *Garcia* vs. *Preston*, 17 P. R. Rep. 556, 558.

[16] See footnote 15, *ante*, p. 51.

The citation to the first of these cases, *Vicenty* vs. *Vazquez, supra,* 11 P. R. Rep. 275, 284, is also printed under Section 191 of the Code (Ed. of 1933, p. 73).

In this last mentioned case of *Vicenty* vs. *Vazquez, supra,* in dealing with the sufficiency of a complaint, and referring directly to Sections 103 and 191 of the Code, the Supreme Court of Puerto Rico said (11 P. R. Rep., at pp. 284-285):

> "It is high time that we should realize that in modern procedure the prayer of a complaint is not of great importance, and, in fact, such prayer, as we understood it in the former system of procedure, is not now necessary. It is enough in order that the complaint may be considered sufficient that it embody the requisites prescribed by section 103 of the Code of Civil Procedure and permit of the trial being held, at which the proper evidence may be heard.
>
> **"All that the judgment has granted is compatible with the allegations of the complaint and is comprised in the subject matter of the litigation.** The judge of the Mayaguez court has therefore complied with the provisions of section 191 of the Code of Civil Procedure". (*Emphasis supplied.*)

In *Ochoa* vs. *Lanza, supra,* 17 P. R. Rep. 398, 406, the insular Supreme Court, after pointing out that "conclusions of law serve no purpose in pleadings", said [quoting approvingly from Encyclopedia of Pleading and Practice, Vol. 12, p. 1022]:

> "The system of allegations under the code is emphatically a system of facts; only facts must be alleged—that is, in contradistinction to law, arguments, hypotheses, or evidence of the facts."

And in *Garcia* vs. *Preston, supra,* 17 P. R. Rep. 556, 558, the insular Supreme Court, referring to the California Code of Civil Procedure upon which the Puerto Rico Code is modelled [17], said:

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[17] See "Rule 1" of the Rules for Printing the 1933 edition of the Puerto Rico Code of Civil Procedure. Footnote 15, *ante,* p. 51.

> "A complaint under our system must contain a statement of the facts in ordinary and concise language." (Code of Civil Procedure, sec. 103). In a very early case in California, MR. JUSTICE FIELD held that 'facts only must be stated. This means facts as contradistinguished from the law, from argument, from hypothesis, and from the evidence of the facts.' ".

H. Under the Code, and in the light of the foregoing rulings, the allegations of the complaint in the present case were amply sufficient to support the insular Supreme Court in taking jurisdiction of this proceeding and in its findings and judgment based upon the corporation's violation of the local corporation law, demonstrated by the facts alleged in the complaint. In treating the allegations as sufficient for that purpose the insular Supreme Court was consistently following its own earlier rulings under the Code.

Point XV.

This ruling of the insular Supreme Court interpreting the local Territorial Code of Civil Procedure and adhering to its own former rulings [in effect adopted by the Legislature by approving the printing of the citations in the 1933 edition of the Code] **was, in any event, not so "clearly erroneous" as to justify the Circuit Court of Appeals in disturbing it, or in reversing the judgment of the Supreme Court of Puerto Rico on this question of local pleading or procedure.**

A. The rule of the respect to be accorded to a decision of a local Territorial court of last resort, interpreting and applying local statutes and local rules of pleading and procedure, has been recently emphatically re-stated by this court with reference to decisions of the Supreme Court of Puerto Rico. In *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511, this court, reversing the Circuit Court of Appeals for the First Circuit, said:

"And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute, and to sustain such a construction in the absence of clear or manifest error.

"* * *. Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

And this Court has now again emphatically reiterated the same principle. *Sancho Bonet, Treasurer* vs. *Texas Company, supra*, United States Law Week, January 2, 1940, pp. 37, 38. To the same effect are also the earlier decisions cited in the footnotes to this court's opinion in the *Yabucoa Sugar Co.* case (306 U. S., *supra*, at pp. 509-510). The rule is settled.

B. Clearly, therefore, JUDGE PETERS was right in his dissenting opinion hereinbefore quoted (R. 332; *ante*, Petition, p. 9) in holding the allegations of the complaint sufficient, and that in any event the judgment of the insular Supreme Court,

"should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all, does not differ essentially from any other suit aimed to settle a dispute between the parties".

C. The majority opinion was wrong (R. 329, *hereinbefore quoted, ante*, pp. 49-50) in reversing it on this ground.

SIXTH

THE *QUASI*-SOVEREIGN GOVERNMENT OF PUERTO RICO CANNOT BE ESTOPPED FROM ENFORCING ITS STATUTES LIMITING THE LAND-HOLDING POWERS OF ITS DOMESTIC AGRICULTURAL CORPORATIONS, BECAUSE OF DELAY OR LACK OF ACTION BY FORMER INSULAR EXECUTIVE OFFICIALS OR FOR-

MER LEGISLATURES; PARTICULARLY, WHERE, AS HERE, THE INSULAR STATUTES WERE ENACTED IN ORDER TO CARRY CONGRESSIONAL STATUTES AND THE POLICY OF THE CONGRESS INTO EFFECT.

Point XVI.

The Government of Puerto Rico is *quasi*-sovereign.

In relation to the question here presented Puerto Rico stands on the same footing as a State of the Union. *People of Porto Rico* vs. *Rosaly*, 227 U. S. 270, 274; *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 261-262.

Point XVII.

The majority opinion of the Circuit Court of Appeals is clearly in error in this respect, and appears to be in direct conflict with the decisions of this court in *Chicago B. & Q. R. R. Co.* vs. *Iowa, supra*, 94 U. S. 155, 162, and *Louisville & Nashville R. R. Co.* vs. *United States, supra*, 282 U. S. 740, 759, as well as with the decisions of the Circuit Courts of Appeals of the Second and Sixth Circuit, and decisions of the courts of last resort of several of the States.[18]

A. Although recognizing (R. 328) the decisions of this court in the *Chicago B. & Q. R. R. Co.* vs. *Iowa* and *Louisville & Nashville R. R. Co.* vs. *United States* cases, as holding, respectively, that "*A statute, it is true, is not rendered ineffective by non-use*" and "*A failure to enforce a law does not necessarily repeal it*", the opinion nevertheless proceeds to say (R. 328, *supra*):

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[18] *Seeley* vs. *Helvering* (C.C.A.—II), 77 F. (2d) 323, 324; *Standard Oil Co.* vs. *Fitzgerald* (C.C.A.—VI), 86 F. (2d) 799, 802; *People* vs. *Pullman Palace Car Co., supra*, 175 Ill. 125, 163-165; *Pearson* vs. *International Distillery*, 72 Iowa 348, 34 N. W. 1, 5-6, *affirmed, sub nom. Kidd* vs. *Pearson*, 128 U. S. 1; *Interstate Forwarding Co.* vs. *Vineyard* (Tex. Civ. App.), 3 S. W. (2d) 947, 957; *State* vs. *Burr*, 79 Fla. 290, 84 Sou. 61, 74; *State* vs. *Meek*, 26 Wash. 405, 67 Pac. 76, 78; *State* vs. *Nease*, 46 Ore. 433, 80 Pac. 897, 899; *Parker* vs. *Board of Dental Examiners*, 216 Cal. 285, 14 Pac. (2d) 67, 73.

"While it may be urged that the insular government may not be prevented from invoking the statutes in a proper case prohibiting the limitation of holdings of agricultural land in excess of 500 acres, we think it should not be permitted *to forfeit land for past violations* which it has winked at and condoned; and if it *confiscates* them it must do so under the rules of eminent domain in accordance with the provisions of the second paragraph of Sec. 6 of Act No. 47,[19] Laws of 1935 (Special Session), *supra*, hereinbefore referred to." (*Italics supplied*)

B. This holding reflects *two serious misapprehensions* in relation to this case: (a) In considering as of importance in this case the thought that the insular government "should not be permitted *to forfeit land*"; and (b) In speaking only of "*past violations*" which "it has winked at and condoned".

Point XVIII

This case does not involve any forfeiture of land.

As heretofore pointed out [*ante*, p. 15; and footnotes 3, 11, 12, pp. 10, 49] *no forfeiture of land is involved in this case*. No such forfeiture was asked in the complaint (Prayer, R. 4-5, 46-47); and none was adjudged by the insular Supreme Court, nor even hinted at in its findings (R. 304, 305). And yet this idea, that the insular government cannot be permitted to "*forfeit land*" in this proceeding, runs all through the opinion of the majority judges of the Circuit Court; and manifestly influences their conclusions. It reflects a wholly mistaken impression of the character of the case. No question of land forfeiture is involved, in any way.

Point XIX

Nor is this simply a case of "past violations".

A. The foregoing quotation from the opinion (R. 328;

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[19] The same Act No. 47 upon which (with Act No. 33) these proceedings are based.

ante, p. 57) further reflects *another erroneous impression*, that this case is simply one of "*past violations*" which the insular Government "has winked at and condoned".

B. *But this is not a case simply of "past violations" by this corporation.* The complaint does not run upon any such ground. Its allegations are that this corporation [**in the present tense, and at the present time**; Pars. (d) and (e); R. 3, 45]:

> "(d) * * *, owns and controls at present in full ownership, and has owned and controlled for some time, several estates in excess of 500 acres, * * * *.
> "(e) The total area * * * which, as already stated, it applies to agriculture, covers some 12,188 acres."

C. The answer of this respondent corporation, defendant in the insular court (R. 89-98), does not deny these allegations of present continuing, active ownership and control. It thereby directly admits them. [Sec. 132, Code of Civil Procedure of Puerto Rico; Appendix, *infra*, p. 82] *Confer, ante*, Point XI-C, p. 40.

D. In this respect, as hereinbefore noted (*ante*, Point XI-D, pp. 40-41), this respondent corporation is in exactly the same position as was the Pullman Company in continuing to maintain the proprietary city of Pullman; and what the Supreme Court of Illinois said in that case (*People* vs. *Pullman Palace Car Co.*, 175 Ill. 125, 163-164; quoted, *ante*, Point XI-D, pp. 40-41) is equally applicable here:

> "The usurpations of the corporation are not only those of the past but also those of the present, and its plea admits it contemplates a repetition of the offenses in the future."

POINT XX

There is here no *ex post facto* action against this corporation.

A. Respondent says, in its "Brief in Opposition" here, filed before certiorari was granted, referring to the provisions added to the later clauses of Sections 2 and 6 of the Puerto Rican *Quo Warranto* Law by Act No. 47 of the Special Session of 1935,—contemplating that, under certain circumstances, if the insular government shall have so "*chosen*",[20] the lands of offending corporations may be confiscated in extreme cases,—that those provisions are,—[or would be, if they should be applied in the present case],—*ex post facto;* because this corporation acquired its lands in excess of five hundred acres prior to the enactment of that amendatory statute No. 47 in 1935; and that, therefore, the statute is invalid, because, in the absence of any express "separability clause", such invalidity of this *ex post facto* provision invalidates the entire statute.

B. Respondent itself points out (*Brief*, p. 3) that it invited the attention of the Circuit Court of Appeals to this contention, both by its assignments of error in that court (R. 309) and by argument there. But the Circuit Court of Appeals ignored the contention; did not go along with the respondent in this respect.

C. Respondent, however, now thinks that that part of the majority opinion of the Circuit Court of Appeals holding[21] [R. 328; *confer ante*, "Questions Presented * * Fourth", p. 10; and pp. 56-58 *ante*] that the insular government "should not be permitted to forfeit lands for past violations which it has winked at and condoned",

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[20] "and when * * the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction"; next to the last sentence of Section 6 as amended by Act No. 47; Appendix *infra*, p. 80.

[21] Which the respondent does not attempt directly to defend.

may be explained on the theory that (*Respondent's Brief in Opposition*, p. 17):

> "The Circuit Court of Appeals obviously felt that an intending forfeiture (confiscation or alienation of Respondent's land) was contemplated and expressed the opinion that in view of its long tolerance of the violations which Act No. 47 makes a ground of confiscation Petitioner should not be permitted to confiscate the land of defendant corporations under the provisions of Act No. 47 for violations occurring prior to the passage of that Act; in other words, that the penalty of confiscation should not operate retroactively."

D. No reply to this seems necessary. It seems hardly necessary to point out that, if the insular government had "chosen" to confiscate this respondent corporation's lands under that provision of the statute, it would have been necessary for the government to set up, by proper allegations [either in this proceeding or in some other proceeding], that it had so "chosen", and to ask for a decree of confiscation on that basis, and thus to submit the matter to the court for decision; and that, of course, in any such proceeding the respondent corporation would have been entitled to its day in court, and to its opportunity to combat the government's claim of right to have so "chosen" to confiscate the land.

And, in such a case, the corporation would have the opportunity, among other things, if it so desired, to set up [and to be heard upon] its contention that, with regard to its lands purchased prior to 1935, the application of those provisions of that statute would be in the nature of an *ex post facto* proceeding.

E. BUT NONE OF THOSE QUESTIONS IS HERE. The government has not so "chosen" to confiscate this corporation's lands. No such allegation is in the complaint here. Accordingly, the Circuit Court of Appeals, like the insular

Supreme Court, ignored this contention of the respondent.

And there is no basis for respondent's present theory in its brief, as above quoted, that that contention is the explanation of what the Circuit Court of Appeals [erroneously] said as to a supposed estoppel of the insular government; or that what the Circuit Court said on this subject was based, in any way, on respondent's contention in this respect.

F. In any event, even if that *ex post facto* theory were here upon this record [*which it is not*], there are two answers:

FIRST. *Even if respondent's argument were sound, it would not go to the extent of invalidating the statute.* That is not the effect of the finding, in an ordinary case, that a penal statute has been enacted after the commission of a particular offense charged against a particular defendant, and that it is, therefore, not applicable to that offense. For example, if, in a State where there is no capital punishment for murder, the legislature should change the law and provide capital punishment for that offense, then the fact that the penalty of capital punishment could not be imposed for a murder committed prior to the enactment of the new law, for which the offender might be brought to trial thereafter,—[because, manifestly, if applied to that offense, it would be in the nature of an *ex post facto* application of the law],—would not at all invalidate the statute. It would merely mean that the new statute is not applicable to offenses committed before its enactment. So here; even if, for the purposes of the argument, respondent's contention on this point were to be conceded to be sound. But

SECOND. *In any event the argument is not applicable in favor of this respondent in this case.* As is pointed out in Point XIX, *ante*, p. 57-58, this respondent corporation appears to be *still violating the statute*; still violating the

restriction contained in its own Articles of Incorporation; and intending actively to continue its violations.

The prohibitions, both of the federal legislation and of this corporation's own Articles of Incorporation, are not directed simply at the fact of its having purchased the land at some time in the past; but are directed, equally, at its continuing, while engaged in agriculture, to hold and to control this great tract of land, and to use it for agricultural purposes. *These are present violations* of the statutes, and of its own Articles, committed and continuing to be committed *since the date of the enactment of Act No. 47 in 1935.* There is here no disclaimer; no statement of any purpose to discontinue the violations; no application to the court for clemency on any such ground. In so far as the violations have continued since the date of the enactment of Act No. 47, and still continue, there is no ground for respondent's *ex post facto* argument.

G. Respondent complains (*Brief in Opposition*, pp. 2-3, 12-13) of the filing of *lis pendens* notices with the local Registrars of Property, and that the insular Supreme Court did not consider in this proceeding the respondent corporation's motion to direct their cancelation; and respondent seems to consider that as being some ground for sustaining the judgment of the Circuit Court of Appeals here. But that question is not in this case at all, on this record. Respondent could not raise it upon its demurrer to the complaint which does not mention that subject (R. 2-5, 44-47). As was properly pointed out in the Attorney General's answer (R. 65) to the respondent's motion in the insular Supreme Court for the cancelation of these notices,

> "III. The defendant has an adequate and proper remedy by requesting the cancelation of the aforesaid notices *in the district court.*" (*Italics supplied*)

Had the respondent so desired, it could have raised this question by direct proceedings in the District Court.

from which it could have appealed in regular course, in case it should have felt itself aggrieved by the decision of that court.

But no question relating to the *lis pendens* notices, or to their possible effect, is here in this case; or can have any bearing here. The Circuit Court of Appeals properly ignored respondent's contention in this respect.

POINT XXI

The titles and form of Acts 33 and 47 are amply sufficient under Section 34 of the Organic Act.

Respondent says (*Brief in Opposition*, pp. 4, 9) that these Acts Nos. 33 and 47 of 1935 offend against the provisions of Section 34 of the Organic Act for Puerto Rico as to title, and as to amending prior acts of the Legislature.[22]

A. As respondent itself says (*Brief*, pp. 2, 3), the respondent raised this question by its assignments of error in the Court of Appeals; and argued it there. But that court ignored it; although, in stating the case (*Majority Opinion*, R. 320), it noted the fact that the respondent corporation was making that contention. In other words, in effect, it agreed with the insular Supreme Court in overruling respondent on this point.

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[22] Organic Act, Sec. 34, Pars. 8 and 9, c. 145, 39 Stat. 951, 962; Appendix, *infra*, p. 70:

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

"No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length."

B. *The contention is unsound in any event.* These statutes do not offend against these provisions of the Organic Act.

FIRST. The titles are sufficient. Each of them "*states a single main object;*[23] and is fully sufficient to guard against the evil confusion prohibited by the Organic Act" (*Gallardo vs. Porto Rico Ry. Light & Power Co.*, 18 F. (2d) 918, 922), the aim being "to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation." (*Posados, Collector, vs. Warner, Barnes & Co.*, 279 U. S. 340, 344).

SECOND. As to the respondent's contention (*Brief*, p. 9) that these provisions of Section 34 of the Organic Act prevent the Legislature of Puerto Rico from "adopting by reference"[24] the federal joint resolution [the 500-acre law], manifestly the respondent is mistaken. Respondent cites no authority in support of this contention. Plainly, on its face, paragraph 9 of Section 34 [Footnote 22, *ante*, p. 63] *relates simply to reenactment or amendment of former acts of the Legislature itself.* The Congress did not intend to prevent the Legislature from referring to the underlying legislation of the Congress, which is a part of the "supreme Law of the Land" in the Island [Const. Art. VI, Sec. 2; which the Legislature could not change] *as boundary stones*, or from thus adopting it by reference as a part of its own local legislation. [*Confer Points VI and VII, ante*, pp. 29-34.]

The Circuit Court of Appeals was right in ignoring this contention of the respondent.

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[23] *Italics supplied.*

[24] *Ante*, Points VI and VII, pp. 29-34.

CONCLUSION

The decision of the Supreme Court of Puerto Rico and its judgment in this case were right, and should be affirmed. The judgment of the Circuit Court of Appeals entered on the majority opinion of JUDGES WILSON and MAHONEY, reversing the judgment of the insular Supreme Court, over the dissenting opinion of JUDGE PETERS, was wrong and should be reversed.

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APPENDIX

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. (Art. IV, Sec. 3, Cl. 2.)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land. (Art. VI, Cl. 2.)

No person shall be * * * ; nor be deprived of life, liberty, or property, without due process of law. (Fifth Amendment.)

FEDERAL STAUTES:

(1) **The former Organic Act for Puerto Rico, the "Foraker Act"** of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided:

Sec. 27. That all local legislative powers hereby granted shall be vested in a legislative assembly * * * designated "The legislative assembly of Porto Rico".

Sec. 32. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including * * * the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof.

Sec. 33. That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, Numbered One hundred and eighteen, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by General Orders, Numbered One hundred and ninety-five promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the munici-

palities thereof in force, so far as the same are not in conflict herewith, all which courts and tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attaches thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders, Numbered One hundred and eighteen, and One hundred and ninety-five, until otherwise provided by law: *Provided, however*, That the chief justice and associate justices of the supreme court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with the advice and consent of the executive council, and all other officials and attaches of all the other courts shall be chosen as may be directed by the legislative assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attaches for each, their jurisdiction, their procedure, and all other matters affecting them.

(2) **General Orders, No. 118, as promulgated by Brigadier-General Davis, Military Governor of Puerto Rico,** August 16, 1899, provided:

General Orders,
No. 118.

Headquarters Department of Porto Rico.
San Juan, August 16, 1899.

Upon the recommendation of the Judicial Board, the following reorganization and functions of the Judiciary of this Island were approved on August 10th, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the Courts of Justice of this Island will, from the 10th inst. undergo reforms in accordance with the following dispositions:

2. There shall be a Supreme Court of Justice with

fixed residence in the city of San Juan, composed of a Chief Justice and four Associate Justices who jointly will constitute a Judicial Bench for all civil and criminal business; the court shall also have a prosecuting attorney, one Secretary, two court clerks, one file clerk and taxer of costs, six clerks, one janitor and two Bailiffs.

3. The island is divided into five judicial Districts * * * *.

By command of Brigadier-General Davis:

W. P. Hall,
Adjutant General.

(3) **Section 3 of Joint Resolution No. 23, approved May 1, 1900,** provides in pertinent part (31 Stat. 715, 716; 48 U. S. Code):

Sec. 3. * * * **No corporation shall** be authorized to conduct the business of buying and selling real estate or **be permitted** to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and **every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land;** and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (*Emphasis supplied*)

(4) **The present Organic Act for Puerto Rico, the "Jones Law",** Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides:

Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * * *

That no law impairing the obligation of contracts shall be enacted. * * * *

That no *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law. * * * *

Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws.

Sec. 23. That the Governor of Puerto Rico, within sixty days after the end of each session of the Legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn transmit the same to the Congress of the United States, copies of all laws enacted during the session.

Sec. 25. That all local legislative powers in Puerto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "The Legislature of Puerto Rico".

Sec. 34. That * * *. All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. * * * *

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power

to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof, in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

Sec. 39 [2d Par.] That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Puerto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That the Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico.

Sec. 57. That the laws and ordinances of Puerto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Puerto Rico or by Act of

Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit.

PUERTO RICO:

(1) **The "Act Establishing *Quo Warranto* Proceedings"**, approved March 1, 1902 ("Rev. Stats. and Codes of Porto Rico", 1902, Pars. 779-787, pp. 282-284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319-1327, pp. 268-269), **as originally enacted,** provided in pertinent part:

> Sec. 2. [Par. 780, Rev. of 1902; Par. 1320, Rev. of 1911]. That in case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or exercises rights not conferred by law: The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of "Quo Warranto" in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.
>
> Sec. 6. [Par. 784, Rev. of 1902; Par. 1324, Rev. of 1911]. In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise,[25] and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: *Provided*, that instead of judgment of ouster from a

[25] The "Rev. Stats. and Codes" of 1902 (Par. 784, p. 283, last line at the bottom of the page) says "is" [its] "franchise".

franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense.[26]

(2) **"An Act Establishing The Supreme Court Of Porto Rico As a Court Of Appeals"**, approved March 12, 1903 (Laws of 1903, p. 59; Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241) provides in pertinent part:

> Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out, alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay.
>
> Section 2.—All the Sections of the Law of Civil Procedure establishing proceedings for appeals on cassation are hereby repealed.

(3) **"An Act To Confer Original Jurisdiction On The Supreme Court Of Porto Rico For The Trial And Adjudication Of Certain Property Claimed By The Roman Catholic Church in Porto Rico"**, approved March 10, 1904 (Laws of 1904, pp. 134-135) provided in pertinent part:

> Section 1.—Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing,

[26] By Act No. 37, April 24, 1931 (Laws of 1931, pp. 354-356), Section 6 was amended by inserting a second *proviso* requiring any defendant against whom a judgment has been rendered declaring him "to have usurped any public office or to be unlawfully performing the duties thereof", "immediately" to "retire from said office and cease performing the duties thereof."

or which may arise, between the Roman Catholic Church in Porto Rico and the People of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

Section 3.—The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication . . . .

Section 5.—Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

[MEMO.—The validity of this Act of March 10, 1904, conferring original jurisdiction on the insular Supreme Court for the purposes designated in the Act, was sustained by the United States Supreme Court in *Ponce vs. Roman Catholic Apostolic Church*, 210 U. S. 296, 303-308].

(4) Act No. 30, **An Act to establish a law of private corporations,** approved March 9, 1911; Pars. 407, *et. seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89-90 [Revision and substantial reenactment of "An Act Regarding Corporations", Laws of 1902, pp. 258 *et seq.*; Rev. Stats. and Codes of 1902, Civil Code, Title II, Secs. 32 *et seq.*, pp. 759 *et seq.*]

Article I. *Organization of corporations and revocation of incorporation.*

Section 1. Private corporations may be organized by voluntary association of three or more persons, for the purposes and in the manner designated hereunder.

Sec. 2. The object or subjects of corporations organized under this act, may be:

1. The establishment of mercantile or industrial enterprises, which shall be operated and developed under all forms and within all licit combinations which human intelligence and activity may suggest or permit, without any other limitation than those imposed by the statutes of the United States and the laws of Porto Rico.

2. The establishment of building enterprises for the construction of public and private buildings.

Sec. 3. Every corporation has power.

1. To have succession by its corporate name in perpetuity or for the period mentioned in its articles of incorporation.

2. To sue or to be sued in any court.

3. To have and use a seal, which it may alter at will.

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation'' [The Act of 1902 reads ''any corporation'', omitting the word ''agricultural''. Rev. Stats. & Codes of 1902, *supra,* Civil Code, Sec. 32—(4), p. 759] ''organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.

5. To appoint the officers and agents required by the business of the corporation and to make them reasonable compensation.

6. To make by-laws as to the number of directors, as to the management, regulation and government of its property and affairs and the transfer of its stock subject to the provisions of this act.

7. To dissolve, either voluntarily or by operation of law and in accordance with the provisions of this act.

8. To possess and exercise, subject to the restrictions and liabilities contained in this act and in the

Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this act and of the Civil Code.

Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the statutes of the United States concerning banks.

Sec. 5. Any corporation organized under this Act may be dissolved at the pleasure of the Legislative Assembly who may also, at its pleasure, alter, suspend or repeal its articles of incorporation or any addition or amendment made to the same. Any amendment or repealing act hereafter enacted by the Legislative Assembly shall be binding upon the corporations organized under this act. Such amendment or repeal, however, shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred by it or them. This title and all amendments thereto shall be deemed a part of the charter of every corporation formed hereunder, except so far as the same are inappropriate and inapplicable to the object of such corporation.

Article II. Formation, Alteration and Dissolution of Corporations.

Sec. 6. Articles of Incorporation.—That on executing, acknowledging and filing articles of incorporation, in accordance with the next section of this act, three or more persons of full legal capacity may organize a corporation for any lawful purpose or purposes, and any such corporation may conduct a business in Porto Rico and the United States, or any foreign country, and may hold, acquire, mortgage and transfer real or personal property, or

maintain one or more offices outside of the Island of Porto Rico, provided such powers are included in the objects mentioned in the certificate of incorporation: *Provided, however,* That it shall not be lawful to organize under this chapter any bank, savings bank, building or loan association, or insurance company: *Provided, further; however*: That the charter of every railroad company, telegraph company, telephone company, canal company, electric light company, turnpike company, or any other company requiring the exercise of the right of eminent domain or any public-service corporation, shall be subject to amendment, alteration or repeal by the Legislative Assembly of Porto Rico; and the charters of such corporations shall expressly so provide; and all such corporations shall be subject to effective regulation, as now or hereafter made be provided by law.

The right and power to purchase, construct, lease and operate railroads, street railways, and the business of developing, transmitting and distributing electricity to the public and private consumers, and any other lawful business incident to, connected with, or which shall promote the main business of said corporation, may be included in one chapter.

Sec. 7. The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgements. They shall set forth:

1. The name of the corporation; but no name shall be assumed already in use by any other corporation, or so nearly similar thereto as to lead to confusion or uncertainty.

2. The location including the town or city, street and number, if there be any, of its principal office in the Island of Porto Rico.

3. The period, if any, limited for the duration of the corporation.

4. The object or objects for which the corporation is formed.

5. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided, and the par value of each share, and the amount of paid-in capital, with which it shall commence business, which shall not be less than one thousand dollars.

6. The names and post-office addresses of the incorporators and the number of shares subscribed for by each and the amount of their subscription paid in by each.

7. Any provisions which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation, or for creating, defining, limiting and regulating the powers of the corporation directors or of the stockholders, provided that such provision or provisions shall be consistent with this act.

(5) ***Acts Nos. 33 and 47; Special Session, 1935.***

Act No. 33, approved July 22, 1935, entitled

"An Act To Confer Upon The Supreme Court of Puerto Rico Exclusive Original Jurisdiction In *Quo Warranto* Proceedings That The Government Of Puerto Rico May Institute For Violations Of The Provisions Of Section 752, Title 48, United States Code, And For Other Purposes", copied in full in the Record here ("Exhibit No. 11", R. 239-240),

provides in pertinent part (Laws of 1935, Special Session, p. 418):

Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to

institute a proceeding of the nature of *Quo Warranto*.

Act No. 47, approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, copied in full in the Record here ("Exhibit No. 12", R. 240-243), **amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902** [*ante*, pp. 68-69; Sec. 6 already amended by the Act of 1931, Footnote 21, *ante*, p. 69, amendment concerning public offices, immaterial here], so as to read in pertinent parts:

> Section 2.—In case any person should usurp, or unlawfully hold or execute any public office * * * *, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for" [leave to file][27] "an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for" [leave to file][27] "an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *
>
> Section 6.—In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against

[27] Spanish: "una solicitud para que se instruya información de la naturaleza del *quo warranto*".

such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; * * * *

Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property, and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

(6) **Code of Civil Procedure of Puerto Rico (Edition of 1933).**

Section 103.—(426 Cal.)[28] The complaint must contain:

1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

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[28] The references, here and in other sections of this Code, are to the sections of the California Code of Civil Procedure, upon which the Puerto Rico Code is modelled. See "Rule 1" of Act No. 6, approved March 31, 1933, "Establishing Rules for the Printing of the Code of Civil Procedure of Puerto Rico"; Laws of 1933, p. 194; *ante*, foot-note 15, p. 54.

2. A statement of the facts constituting the cause of action, in ordinary and concise language.

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

Section 105.—(430 Cal.) The defendant may demur to the complaint within the time required in the summons to answer, when it appears on the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has no legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action; or,

7. That the complaint is ambiguous, unintelligible, or uncertain.

Section 109.—(434 Cal.) If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Section 110.—(437 Cal.) The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counterclaim. If the complaint is verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the de-

fendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

Section 122.—(453 Cal.) In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Section 132.—(462 Cal.) Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counterclaim, must, on the trial, be deemed controverted by the opposite party.

Section 133.—(463 Cal.) A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Section 142.—(475 Cal.) The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

Section 191.—(580 Cal.) The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC.
Respondent.

REPLY BRIEF FOR PETITIONER

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Rufus H. Darby Printing Co., Washington, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

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RUBERT HERMANOS, INC.,

Respondent.

REPLY BRIEF FOR PETITIONER

I

The decision of the Supreme Court of Puerto Rico was based in part on this corporation's violations of local law.

Respondent says (*Brief*, p. 5):

> "In the brief filed by the Petitioner as appellee in the Circuit Court of Appeals, the theory that the proceeding was in part based upon the violation of any statute of Puerto Rico was for the first time suggested, and the claim for the first time advanced that the allegations contained in the Information were susceptible of such a construction."

This is substantially a restatement of what respondent said in its "Brief in Opposition" (pp. 5-6) to the Petition for Certiorari. *It is plainly incorrect*, as was pointed out in our "Reply Brief for Petitioner In Reply to Respondent's Brief in Opposition" (pp. 8-10).

A. (1) The record shows that the Supreme Court of Puerto Rico *did specifically* base its judgment in part upon its finding (R. 304, 305),

> "that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land *in violation of * * * its own articles of incorporation*, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres";

and (2) The Circuit Court of Appeals itself finds [*Majority Opinion*, R. 327] that: "*The judgment of the insular Supreme Court was based in part on these allegations*" that the "*local law of Puerto Rico had been violated*"[1].

B. Plainly, the insular Supreme Court's finding that this corporation's holding of 12,188 acres of land was "*in violation of * * its own articles of incorporation*" was *necessarily a finding of its violation of the local laws.* The local corporation law of March 1, 1902,[2] reenacted without change in this respect in 1911, and in force ever since,[3] states (Secs. 1 and 2) for what objects private corporations may be organized, and (Sec. 3) their powers, with the *proviso*, however (Sec. 3, Par. 4),

> "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States of May first, nineteen hundred";

---

[1] But the Circuit Court proceeds to hold (R. 329) that the allegation of violation of the local law was "too indefinite" and to overrule the local Supreme Court on that ground. [*Brief for Petitioner*, pp. 49-55.]

[2] Twenty-five years before this corporation's organization in 1927.

[3] Brief for Petitioner, Appendix, pp. 74-78.

that every corporation may (Sec. 3, Par. 8) "*possess and exercise, subject to the restrictions* and liabilities *contained in this act and in* the Civil Code *and its articles of incorporation* such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are *not inappropriate to or inconsistent with such articles of incorporation* * * *"; and further that (Sec. 4):

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section."

Necessarily, therefore, the insular Supreme Court's finding that this corporation "engaged in agriculture" was, holding this great tract of land, "in violation of * * * its own Articles of Incorporation", was a direct finding of its violation of this local corporation law under which it was organized.

And the local *quo warranto* law, from its first enactment on March 1, 1902 (the same date as the enactment of the local corporation law) has carried the provision:[4]

> "Sec. 2. That in case * * any corporation * * * * * exercises rights not conferred by law",

it is liable to *quo warranto* proceedings for its dissolution.

II

***The Joint Resolution* of Congress of May 1, 1900, *is directly binding upon the corporations themselves* as well as upon the Legislature and the entire Insular Government.**

As said in our original "Brief for Petitioner" [Point V, p. 28], it is "an expression of the public policy of the

[4] Brief for Petitioner, Appendix, p. 72; provision re-enacted in Act No. 47 of August 7, 1935, Sec. 2, Brief for Petitioner, Appendix, p. 79.

United States, and of the intent of the Congress that it should become a fixed rule of property in the Island, and a part of the basic law of the land there".

Respondent now says (*Brief*, p. 14; *and see also* p. 17):

> "The Joint Resolution of May 1, 1900, which is continued in force or incorporated in the present Organic Act of Puerto Rico, in and by Section 39 of that act, was *not addressed to corporations, nor did it contain provisions which corporations could violate.*" (*Italics supplied.*)

A. This is substantially a restatement of what respondent said on page 11 of its Brief in Opposition; and, as we pointed out in our Reply Brief (pp. 10-12) to the Brief in Opposition, counsel for respondent are here echoing what the Court of Appeals said in its majority opinion (R. 325) as to Act No. 33 of the Legislature of Puerto Rico "converting" the Joint Resolution of Congress "into a limitation on the powers of corporations".

B. But, as we pointed out in our reply to the Brief in Opposition:

C. **Neither the Circuit Court's opinion nor the respondent cites any authority** for this bald statement of the supposed limited character of this Act of Congress, the Joint Resolution of May 1, 1900. *The contention is clearly erroneous.*

D. Joint Resolution No. 23, of May 1, 1900, like every other Act of Congress relating to the Territories, was enacted in the exercise of the plenary power of the Congress under Article IV, Section 3, clause 2 of the Constitution: and is the "supreme Law of the Land" in the Island (Const., Art. VI, Sec. 2[5]), binding directly, of its own force, not only on the Legislature, but likewise on every other branch of the insular government, and necessarily entering into and forming a part of every act of the Legis-

[5] Brief for Petitioner, p. 20.

lature. It therefore necessarily, of its own force, automatically entered into and became a part of the local Corporation Law enacted by the Legislature, and likewise of the articles of incorporation of every corporation chartered under that law, or under any authority from the Legislature,—and hence, of the Articles of Incorporation of this respondent company,—**even aside from the express adoption of it by the Legislature in the *proviso* to Paragraph 4 of Section 3 of the Corporation Law** (*Brief for Petitioner*, p. 33, *and Appendix*, p. 75).

E. *The wording of the Joint Resolution itself* [J. R. No. 23, Sec. 3, 31 Stat. 715, 716] *indicates that it is intended to be addressed*, not only to the Legislature, or to the Legislature alone, but likewise, like every public law, to the entire insular government and to the public generally, and *particularly to the corporations themselves.* It says:

(a) "That all franchises * * * shall provide that the same shall be subject to amendment, alteration, or repeal".

(b) "* * * shall forbid the issue of stock or bonds, except in exchange for actual cash, * * *".

(c) "No corporation shall be authorized to conduct the business of buying and selling real estate".

(d) "No corporation shall * * * be permitted to hold or own real estate except * * *,"

(e) "and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land";

(f) "and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture."

(g) "Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but

they shall dispose of real estate so obtained within five years after receiving the title".

(h) "Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable".

III

Respondent ignores the accepted doctrine that every corporation chartered under any general State or Territorial corporation law necessarily must be regarded as having embodied in its charter the provisions and limitations of the statutes and Constitution under which the corporation is organized.

A. The respondent contends that the Joint Resolution constitutes a limitation of the powers of the territorial legislature but not of corporations organized under the laws of the Territory. From this premise, respondent argues that Acts Nos. 33 and 47 are invalid either because (a) they unlawfully amend the Joint Resolution by converting it into a limitation on the powers of corporations or (b) they "extend" or incorporate its provisions into local law as a limitation on the powers of corporations without publishing the provisions in full, in violation of Section 34 of the Organic Act. (*Brief*, p. 54.) The premise and the conclusions are both unsound.

The respondent ignores the accepted doctrine that, even without express incorporation, every corporate charter necessarily embodies the provisions of the general incorporation law and the constitution of the grantor regarding the terms and conditions under which corporations may be organized, *Hamilton Gas Light and Coke Co.* v. *Hamilton City*, 146 U. S. 258, 269-270; *Freeport Water Co.* v. *Freeport City*, 180 U. S. 587, 594, 596; *People* v. *Chicago Gas Trust Co.*, 130 Ill. 268; *Arkansas Stave Co.* v. *State*, 94 Ark. 27, 32; *Peters* v. *United States Mortgage Co.*, 13 Del. Ch. 11, 14; *Pioneer Telephone & Telegraph Co.* v. *State*, 38 Okla. 554, 558. "The stream cannot rise higher than its source".

B. Indicating the opinion of the members of Congress themselves at the time of the reenactment of this Joint Resolution in 1917 when it was embodied in Section 39 of the present Organic Act for Puerto Rico [*Brief for Petitioner, Appendix*, p. 71], that it operated as a direct limitation on the powers of the corporations themselves, the **"Statement of the Managers on the Part of the House"** upon the Conference Report on the bill, said (Cong. Rec., Vol. 54, p. 4166; 64th Congress, 2nd Sess.):

> "Senate amendment No. 75, page 44, is agreed to with amendment. It provides that nothing in this act shall be construed as abrogating or in any way changing section three of a joint resolution approved May 1, 1900, with respect to real estate holdings, and directs the Governor of Porto Rico to have made and submitted to the next regular session of Congress a report of all the real estate used for the purpose of agriculture and held either directly or indirectly by corporations, partnerships, or indiyiduals. The managers on the part of the House, believing that the report required in this amendment would entail a large amount of work and considerable cost upon the government of Porto Rico, and that every reasonable purpose and object to be attained can be accomplished by limiting the report to holdings in excess of 500 acres **(since subsequent to the enactment of the joint resolution of Congress referred to, no corporation engaged in agriculture could secure a charter which did not restrict it to the ownership and control of not to exceed 500 acres of land)**, have insisted upon such limitation. The Senate conferees have agreed to this limitation. There are now some 55,000 holdings of agricultural lands in Porto Rico the vast majority of which are of small acreage." (*Emphasis supplied.*)

IV

Statutory provisions.

There are in Appendix I (*infra*, pp. 9-13) pertinent sections of the former Organic Act for Puerto Rico, the "Foraker Act", and of the present Organic Act, addi-

tional to those in the Appendix to our original "Brief for Petitioner"; and also Puerto Rican Act No. 11 of 1913, amending Article 353(2) of the Political Code, so as to restrict the powers of foreign corporations doing business in the Island to such "as a domestic corporation of like character" could exercise.

Appendix II, *infra*, p. 14, contains an English translation of a contemporary statement by the author of the bill in the Senate of Puerto Rico, published in "EL MUNDO", of San Juan, February 12, 1935, of the purpose of Act No. 33 of 1935, here in question.

CONCLUSION

As stated in the "Conclusion" of our "Brief for Petitioner" (p. 65), the decision of the Supreme Court of Puerto Rico, and its judgment in this case, was right and should be affirmed; that of the Circuit Court of Appeals entered on the majority opinion of JUDGES WILSON and MAHONEY reversing the judgment of the insular Supreme Court, over the dissenting opinion of JUDGE PETERS, was wrong, and should be reversed.

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APPENDIX

APPENDIX I

STATUTORY PROVISIONS

FEDERAL

The former Organic Act, "Foraker Act", approved April 12, 1900, c. 191, 31 Stat. 77 *et seq.*

Section 18.—That there shall be appointed by the President, by and with the advice and consent of the Senate, for a period of four years, unless sooner removed by the President, a Secretary, an Attorney-General, a Treasurer, an Auditor, a Commissioner of the Interior, and a Commissioner of Education, each of whom shall reside in Porto Rico during his official incumbency and have the powers and duties hereinafter provided for them, respectively, and who, together with five other persons of good repute, to be also appointed by the President for a like term of four years, by and with the advice and consent of the Senate, shall constitute an Executive Council, at least five of whom shall be native inhabitants of Porto Rico, and, in addition to the legislative duties hereinafter imposed upon them as a body, shall exercise such powers and perform such duties as are hereinafter provided for them, respectively, and who shall have power to employ all necessary deputies and assistants for the proper discharge of their duties as such officials and as such Executive Council.

Section 26.—That the other five members of the Executive Council, to be appointed as hereinbefore provided, shall attend all meetings of the Executive Council and participate in all business of every character that may be transacted by it; and they shall receive as compensation for their services such annual salaries as may be provided by the Legislative Assembly.

Sec. 27.—That all local legislative powers hereby granted shall be vested in a Legislative Assembly which shall consist of two Houses; one the Executive Council, as hereinbefore constituted, and the other a House of Delegates, to consist of thirty-

five members elected biennially by the qualified voters as hereinafter provided; and the two Houses thus constituted shall be designated "The Legislative Assembly of Porto Rico".

Section 28.—That for the purposes of such elections Porto Rico shall be divided by the Executive Council into seven districts, composed of contiguous territory and as nearly equal as may be in population, and each district shall be entitled to five members of the House of Delegates.

Section 30.—That the House of Delegates shall be the sole judge of the elections, returns and qualifications of its members, and shall have and exercise all the powers with respect to the conduct of its proceedings that usually appertain to parliamentary legislative bodies. No person shall be eligible to membership in the House of Delegates who is not twenty-five years of age and able to read and write either the Spanish or the English language, or who is not possessed in his own right of taxable property, real or personal, situated in Porto Rico.

Sec. 31.—That all bills may originate in either House, but no bill shall become a law unless it be passed in each House by a majority vote of all the members belonging to such House and be approved by the Governor within ten days thereafter. If, when a bill that has been passed is presented to the Governor for signature, he approves the same, he shall sign it, or if not he shall return it, with his objections, to that House in which it originated, which House shall enter his objections at large on its journal and proceed to reconsider the bill. If, after such consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be considered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be en-

tered upon the journal of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislative Assembly by adjournment prevent its return, in which case it shall not be a law; *Provided, however*, That all laws enacted by the Legislative Assembly shall be reported to the Congress of the United States, which hereby reserves the power and authority, if deemed advisable, to annul the same.

Section 32.—That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities, so far as may be necessary, and to provide and repeal laws and ordinances therefor; and also the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof; *Provided, however*, That all grants of franchises, rights, and privileges or concessions of a public or quasi-public nature shall be made by the Executive Council, with the approval of the Governor, and all franchises granted in Porto Rico shall be reported to Congress, which hereby reserves the power to annul or modify the same.

The present Organic Act for Puerto Rico, the "Jones Law", Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*

Sec. 38.—That all grants of franchises, rights, and privileges of a public or quasi public nature shall be made by a public-service commission, consisting of the heads of executive departments, the auditor, and two commissioners to be elected by the qualified voters at the first general election to be held under this Act, and at each subsequent general election thereafter. The terms of said elective commissioners elected at the first general election shall commence on the twenty-eighth day following the said general election, and the terms of the said elective commis-

sioners elected at each subsequent general election shall commence on the second day of January following their election; they shall serve for four years and until their successors are elected and qualified. Their compensation shall be * * *. The said commission is also empowered and directed to discharge all the executive functions relating to public-service corporations heretofore conferred by law upon the executive council. Franchises, rights, and privileges granted by said commission shall be reported to Congress, which hereby reserves the power to annul or modify the same.

Sec. 39. [1st Par.]—That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

[**Memo.** The 2nd Paragraph of this Section 39 already appears in the Appendix [p. 40] to our "Brief for Petitioner" here.]

Act No. 11, approved March 6, 1913; Laws of Puerto Rico, 1913, pp. 55-56.

To amend section 353, paragraph 2, of the Political Code, so as to impose upon foreign corporations the same legal restrictions as are imposed upon domestic corporations, and to provide for the prevention of their engaging in business without proper registration and license.

Be it enacted by the Legislative Assembly of Porto Rico:

Section 1.—That paragraph 2 of section 353 of the Political Code is hereby amended so as to read as follows:

"(Paragraph 2.)—It shall be unlawful for any corporation, joint stock or limited-liability company or association, not incorporated under the laws of Porto Rico, except associations not for pecuniary profit, to do business therein until such corporation, company or association shall have secured from the Treasury of Porto Rico a formal license to transact business therein; and no such license shall be issued by said Treasurer until such corporation, company or association shall have paid the license fee hereinafter specified and shall have deposited with said Treasurer a certificate under seal from the Secretary of Porto Rico showing that it has filed in the office of the Secretary an authentic copy of its charter and the statement and certificate of consent required by law; *Provided*, That a foreign corporation can only transact such business or exercise such powers as a domestic corporation of like character transacts or exercises in Porto Rico, and to such extent as the latter may be authorized under the local laws, and the license issued by the Treasurer of Porto Rico shall set forth this restriction in the context thereof: *And provided, further*, That it shall be the duty of the Treasurer of Porto Rico to report to the Attorney General, for proper action under the provisions of section 40 of the Private Corporations Act, any foreign corporation which is doing business in Porto Rico without having complied with the requirements prescribed by the local laws and secured from him a license. For such a purpose, the Treasurer shall take such action as may be necessary to secure information in every case in which a foreign corporation is doing business in this island without the legal authorization so to do."

Section 2.—That all laws or parts of laws in conflict with this Act are hereby repealed.

Section 3.—That this Act shall take effect upon its approval.

APPENDIX II

English translation of statement made by the author of the bill, published in "El Mundo", San Juan, February 12, 1935, of the purpose of Act No. 33 of 1935.

"MUNOZ MARIN EXPLAINS THE SCOPE OF FOUR BILLS WHICH HE INTRODUCED YESTERDAY.

"Liberal Senator Munoz Marin gave out the following statements yesterday:

'Upon the convening of the Senate I introduced four bills which I consider to be of great importance. * * . I believe I ought to give the public the full text of those bills and explain their character and scope.

'* * * * *

'As to the fourth bill giving original jurisdiction to the Supreme Court of Puerto Rico in *quo warranto* cases relating to the 500-acre law of Congress, its intent is to accelerate the proceedings the Government may start to enforce the law. All *quo warranto* cases in this regard will perforce reach the Supreme Court after the loss of many months in the District Courts. It is desired to save this loss of time in the economic reconstruction of Puerto Ricans.'"

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IN THE

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THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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January , 1940.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582.

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION.

Statement.

The People of Puerto Rico, by its Attorney General, instituted proceedings of *Quo Warranto* against Respondent by original complaint or information in the Supreme Court of Puerto Rico, which was authorized to be filed by order of the Supreme Court of January 28, 1936. Thereafter petitioner filed Notices of *lis pendens* in the registries of property in which the real property of the Respondent is inscribed. The proceeding was instituted under the authority of two statutes enacted at the Special Session of the Legislature of Puerto Rico in the year 1935, namely Act 33 approved July 22nd and Act 47 approved August 7th of that year. Respondent demurred to the amended complaint upon the ground that both of said acts were invalid; (1) because *ultra vires* in that they amended the Organic Act of Puerto Rico by attaching penalties

and forfeitures and conferred jurisdiction upon the Supreme Court of Puerto Rico of suits for penalties and forfeitures so attached to and arising under a law of the United States, and (2) because both acts violated the provisions of the Organic Act of Puerto Rico as respects entitling, amendment, re-enactment and publication at length; that Act No. 47 is also invalid as *ex post facto* by reason of the penalties and forfeitures therein contained (R. 51-58). The demurrers were overruled on the authority of prior decisions of the Supreme Court overruling pleas and demurrers to the jurisdiction based upon the same grounds of alleged invalidity of Acts 33 and 47 in the *Quo Warranto* proceeding entitled "The People of Puerto Rico, Petitioner, *vs.* Fajardo Sugar Company of Porto Rico, *et als.*". The opinions in the Fajardo Sugar Company case are printed in Spanish in 50 D. P. R. 163 and 51 D. P. R. 876. The corresponding volumes of these reports of the Supreme Court in English have not as yet been published. Translations are printed in the Appendix, pages 19-37, and R. 68-82.

Respondent again challenged Act 47 as *ex post facto* in and by a motion to cancel Notices of *lis pendens* in the Registry of Property (R. 59-65) which was overruled by an order likewise supported by the decision of the court of a similar motion made in *People of Puerto Rico* vs. *Fajardo Sugar Company, et als.* (R. 82-87). In passing upon pleas, demurrers and motion to cancel notices of *lis pendens* the Supreme Court of Puerto Rico declined to decide "for the present" whether the penalties and forfeitures contained in Act 47 made the act an *ex post facto* law. Respondent answered the amended complaint (R. 89-98).

Upon the trial at the close of plaintiff's case, Respondent offered no evidence in support of the allegations of its

Answer but moved to dismiss upon the same jurisdictional grounds raised by its demurrers and motion to cancel *lis pendens*. The motion to dismiss was overruled and the Supreme Court of Puerto Rico entered judgment in favor of the People of Puerto Rico upon the following finding: "that the defendant corporation, Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution 23 of the Congress of the United States (31 Stat. at Large, 716, U. S. C. A. Title 48, Sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own Articles of Incorporation by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres".

From this judgment the Respondent appealed to the Circuit Court of Appeals for the First Circuit, assigning as error the decision of the Supreme Court sustaining its jurisdiction and the validity of the statutes upon which same was based, for the same reasons and upon the same grounds set out in its demurrers to the complaint and motion to cancel notices of *lis pendens* (R. 306-310). The Circuit Court of Appeals entered judgment reversing the judgment of the Supreme Court of Puerto Rico, "but without prejudice to future proceedings under valid statutes, or in the Federal Court based on a violation of Section 39 of the Organic Act or 752 Title 48 U. S. C.". The decision of the Circuit Court was by a divided court. The majority and minority opinions are printed at pages 315 to 322 of the Record. The Circuit Court of Appeals like the Supreme Court of Puerto Rico in deciding the appeal did not pass upon the question of the *ex post facto* character of Act 47 by reason of the penalties and forfeitures therein contained, which was raised by assignments 13 and 14 (R. 309).

Questions Presented.

1. The jurisdiction of the Supreme Court of Puerto Rico in *quo warranto* proceedings rests exclusively on Act 33 of the Legislature of Puerto Rico approved July 22, 1935 and Act 47 of the Legislature of Puerto Rico approved August 7, 1935. If these statutes are invalid the Supreme Court of Puerto Rico is without jurisdiction in this case.

This question subdivides into several questions raised by the various grounds of attack upon the statute, and may be summarized as follows:

(a) Do Acts 33 and 47 amend a law of the United States?

(b) Has the Legislature of Puerto Rico power to amend a law of the United States?

(c) Can the Legislature of Puerto Rico confer jurisdiction upon the Supreme Court of Puerto Rico of a suit for penalties and forfeitures incurred under a law of the United States?

(d) Do the forfeiture and penalty provisions of Act 47 violate the provisions of the Organic Act of Puerto Rico prohibiting the enactment of *ex post facto* laws?

(e) Do Acts 33 and 47 violate the provisions of the Organic Act of Puerto Rico as to entitling, amendment and adoption by reference of statutes?

Petitioner, however, maintains that two other questions are presented, namely:

(1) Whether the Circuit Court of Appeals should have disturbed the decision of the Supreme Court of Puerto Rico treating the allegations of the complaint as sufficient in view of the established rule of respect to be accorded to the territorial Supreme Court construing territorial laws and rules of pleading and procedure?

(2) Should the *semi quasi* sovereign government of Puerto Rico be deemed to be estopped from enforcing its statute limiting the land-holding powers of its domestic agricultural corporations because of delay or lack of action by former insular executive officials or legislators?

In Respondent's view of the case neither of the last two questions are here involved.

Respondent's Position.

Petitioner states that the case presents primarily the question of the power of the Legislature of Puerto Rico to effectuate the purposes of the Congress to limit the land holdings of agricultural corporations in the Island to 500 acres. The record, however, discloses that the Respondent has never questioned the power of the Legislature to enact legislation to carry into effect the provisions of the Joint Resolution and the Organic Act limiting the land holdings of agricultural corporations. In the majority opinion of the Circuit Court of Appeals the contention of the Respondent is stated as follows (R. 322): "The appellant does not deny the power of the Legislature of Puerto Rico to confer jurisdiction upon the Supreme Court of Puerto Rico, or other insular courts, of *quo warranto* proceedings. Its contention, however, is that the power of the Puerto Rican Legislature to confer original jurisdiction on the Supreme Court of Puerto Rico in such cases is limited to matters falling within its legislative ambit." It was never suggested in the Supreme Court of Puerto Rico that the amended complaint set out as a ground for *quo warranto* that Respondent was violating a statute of Puerto Rico, nor did the Supreme Court of Puerto Rico at any time hold that the amended complaint

charged the violation of any statute of Puerto Rico, and finally the judgment of the Supreme Court of Puerto Rico in this case was not based upon a finding that the Respondent had violated a statute of Puerto Rico. This contention was raised for the first time by petitioner in the Circuit Court of Appeals and constitutes a departure from the theory upon which the case was tried and decided in the Supreme Court of Puerto Rico. For these reasons Respondent believes that the argument based upon the supposed reversal of the decision of the Supreme Court on this question cannot be raised here. Nor do the majority judges of the Circuit Court of Appeals rest their decision upon the ground of estoppel. The opinion does not hold that the People of Puerto Rico are estopped from bringing this proceeding by reason of the laches or delay in instituting the proceeding. Properly construed the majority decision holds that the provisions of Act 47 providing for forfeiture and confiscation of land for past violations should not be given a retroactive application, but that if it is proposed to take land such purpose should be effected under the law of eminent domain. The statement in the majority opinion of the Circuit Court of Appeals upon which the question of estoppel is proposed by Petitioner, should be read in the light of the contention of Respondent before that Court that Petitioner proposed to enforce the forfeiture and penalties provided by Act 47 if the judgment of the Supreme Court of Puerto Rico were allowed to stand, and the reasons assigned by Respondent before that Court for such contention.

Statutes.

Parts of the statutes purporting to confer jurisdiction of *quo warranto* proceedings on the Supreme Court of Puerto Rico are copied in the appendix to Petitioner's

brief. A pertinent part of Section 2 of Act No. 47 cited in the majority opinion of the Circuit Court of Appeals is, however, omitted; it reads:

> "When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may at its option, through the same proceedings institute in its behalf the confiscation of such property, or the alienation thereof at public auction within a term of not more than six months counting from the date on which final sentence is rendered. In every case alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Act No. 47 was introduced in the legislature by a bill in the Spanish language and the Spanish text therefore governs (Civil Code of Puerto Rico, Section 13). The English text of Section 6 of the Act, reading:

> "Whenever in the opinion of the court it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity, and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico".

is incorrectly translated. It should read:

> "Whenever in the opinion of the Court it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not con-

ferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts or contracts realized by the defendant corporation or entity."

Argument.

I

Petitioner maintains that Acts Nos. 33 and 47 of the Special Session of 1935 of the Legislature of Puerto Rico are valid statutes because neither of such statutes amends an Act of Congress and that both Acts incorporate by reference the provisions of Section 3 of the Joint Resolution No. 23 of the 56th Congress, approved May 1, 1900, which forms a part of the present Organic Act of Puerto Rico, a form or method of legislation that Petitioner considers that the Legislature of Puerto Rico may properly employ.

Petitioner further contends that the Supreme Court of Puerto Rico is a "Court of the United States" and that the Legislature of Puerto Rico can validly vest that court with jurisdiction in cases of violation of these federal laws named in these insular jurisdictional statutes.

All of the Judges of the Circuit Court of Appeals that took part in the decision of this case were agreed that Acts Nos. 33 and 47 did amend the Joint Resolution of Congress above mentioned which now forms a part of the Organic Act of Puerto Rico.

Judge PETERS in his dissenting opinion does not question the principles of law enunciated in the majority opinion. He says: "If Act No. 47 contained nothing but a penalty for a violation of a federal statute, it would be

clearly invalid for the reasons and on the authorities stated in the above opinion."

The authorities cited in the majority opinion of the Circuit Court of Appeals in support of the holding that these acts amend the federal law mentioned declare and apply well and long established principles of statutory construction as to which there is no conflict.

Additional cases in point are:

Posadas vs. *National City Bank*, 296 U. S. 497, 501;
In re Buelow, 98 Fed. 87;
People vs. *Buffalo Cold Storage Company*, 185 N. Y. Supp. 790.

That the Legislature of Puerto Rico can adopt by reference in a statute that it enacts provisions of the Organic Act of Puerto Rico addressed to the Legislature itself and fixing and limiting its own powers is manifestly an untenable contention. Only Congress has the power to establish a civil government in Puerto Rico and the Organic Act for Puerto Rico was enacted in the exercise of that power. There is nothing in either Act No. 33 or Act No. 47 that indicates any intention of the Legislature to adopt the provisions of the Organic Act referred to. Furthermore assuming that the Legislature of Puerto Rico could otherwise adopt provisions of the Organic Act by reference, this method of legislation is prohibited by the provisions of Section 34 of the Organic Act, reading:

> "No bill except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.
>
> No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title

only, but so much thereof as is revived, amended, extended or conferred shall be reenacted and published at length."

Section 256 of the Judicial Code (28 U. S. C., Sec. 371) not only vests exclusive jurisdiction in courts of the United States of all suits for penalties and forfeitures incurred under the laws of the United States but also of all crimes and offenses cognizable under the authority of the United States, of all matters and proceedings in bankruptcy, of controversies where a State is a party, and of other suits and proceedings. Of all of such suits, prosecutions and proceedings, original jurisdiction is vested in district courts of the United States by the provisions of Section 41 of Title 28 U. S. C.

Section 41 of the Organic Act of Puerto Rico confers upon the District Court of the United States for Puerto Rico jurisdiction of all cases cognizable in District Courts of the United States.

Petitioner's contention that the Legislature of Puerto Rico can validly vest jurisdiction of cases for violation of federal statutes means that the Legislature may likewise confer jurisdiction on the Supreme Court of Puerto Rico of federal crimes and offenses, bankruptcy cases; in short, of all matters of which original jurisdiction is conferred on district courts of the United States and the District Court of the United States for Puerto Rico.

By Section 40 of the Organic Act of Puerto Rico the District Court of the United States for Puerto Rico is expressly excluded from the grant of legislative powers to the Legislature of Puerto Rico.

In granting original jurisdiction to District Courts of the United States and the District Court of the United

States for Puerto Rico, of suits for penalties and forfeitures incurred under laws of the United States the Congress has specified and defined the "Courts of the United States" mentioned in Section 256 of the Judicial Code.

Any legislation by Puerto Rico impairing the jurisdiction expressly conferred on the District Court of the United States for Puerto Rico necessarily conflicts with the provisions of Sec. 40 of the Organic Act of Puerto Rico.

That the Supreme Court of Puerto Rico is not a "Court of the United States" within the meaning of Sec. 371 Title 28 U. S. C. is settled by authority. *Good* vs. *Martin*, 95 U. S. 90, 98. In *Clinton* vs. *Englebrecht*, 13 Wall. 434, 447, this court said:

> "The judges of the Supreme Court of the territory are appointed by the President under the Act of Congress but that does not make the courts they are authorized to hold courts of the United States—This was decided long since in The American Insurance Company *vs.* Canter, 1 Pet. 546, and in the later case of Benner *vs.* Porter, 9 How. 235."

The Congressional field of legislating territories into being and providing territorial forms of government, is necessarily an exclusive field of legislation which the Congress may not abdicate or delegate. Petitioner's contention that the Legislature of Puerto Rico may occupy this field and that in this respect there is no difference between an Organic Act or Territorial Constitution and any other federal Act would seem to require no answer.

Furthermore, as above stated by Acts Nos. 33 and 47 the Legislature of Puerto Rico changes or attempts to change a law addressed to it and limiting its legislative power, into a law addressed to corporations.

II

Petitioner states that neither in the answer nor anything said in defendant's motions, nothing whatever in the case, indicates any purpose or attempt to divest itself of any portion of the land that it holds in excess of five hundred acres and that in this respect the defendant-respondent puts itself into substantially the same position and attitude taken by the Pullman Company in *People* vs. *Pullman Palace Car Company*, 175 Ill. 125, 163, 165; it further states that no question of forfeiture or confiscation of land or imposition of penalties is involved.

Substantially the same statement was made in the Circuit Court of Appeals. Its reiteration here ignores the answer made by Respondent there.

Under the *quo warranto* law in force at the time Respondent was incorporated the only judgment authorized was ouster and fine or fine alone (Sec. 6 of "Act Establishing *quo warranto* proceedings" approved March 1, 1902 copied at p. 68 of Petitioner's brief).

The amendments to the *quo warranto* law effected by Act No. 47 of the Special Session of 1935 of the Legislature of Puerto Rico provided penalties and penal consequences not theretofore existing, namely: the confiscation or alienation of the lands of a defendant corporation at the option of the People of Puerto Rico at any time within six months after final judgment, the cancellation of every entry or registration made in the public registries of Puerto Rico, and the nullity of all acts done and contracts made by a defendant corporation.

Practically simultaneously with the initiation of the proceeding notices of *lis pendens* affecting all real properties of defendant were filed in the Registries of Property. Respondent attempted vainly to obtain a decision from the

Supreme Court of Puerto Rico as to the validity of those penalty provisions by demurrers attacking the same as *ex post facto* and by motion to cancel the notice of *lis pendens*. The Supreme Court declined to decide the questions raised relating to the imposition of new penalties "for the present". (*The People of Puerto Rico* vs. *The Fajardo Sugar Company of Porto Rico, et al.*, Appendix, pp. 19-37.) And never did decide them. Petitioner, in opposing the motion for cancellation of notices of *lis pendens* stated that they should remain in order that the final judgment to be rendered by the Court might be effective and executed in its entirety (R. 65).

While the notices of *lis pendens* stood Respondent could not dissolve and wind up its affairs. Until six months from the date of final judgment had expired it could not dispose of any land. And if the penalties of nullity of its contracts and cancellation of its record titles were valid and enforceable, dissolution would be an empty formality.

Respondent declared its willingness to abandon its appeal, dissolve and pay the fine and costs imposed by the judgment of the Supreme Court upon an assurance by Petitioner that no attempt to enforce the forfeitures and penalties legislated in Act No. 47 would be made. No such assurance was ever given.

III

Petitioner alleges that in any event so much of Act No. 47 is valid as vests original jurisdiction in the Supreme Court of Puerto Rico in cases of corporate violations of insular statutes. This branch of jurisdiction in cases of violations of insular statutes, it is stated, is complete in itself and wholly independent of jurisdiction based on violations of the Organic Act.

There are two answers to this contention:

First, the complaint did not base jurisdiction upon violation of any insular statute nor was the judgment of the court based upon a finding of violation of any insular statute. It was never suggested in the Supreme Court of Puerto Rico at any time that the proceeding was based upon violations of provisions of the Corporation Law of Puerto Rico or any other Puerto Rican statute. This claim was made for the first time by Petitioner in the Circuit Court of Appeals.

The theory and the only theory upon which the proceeding was prosecuted and decided in the Supreme Court of Puerto Rico was that notwithstanding the express prohibition contained in its articles of incorporation and the provisions of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1st, 1900 (U. S. C. Title 48, Section 752) Respondent owned and controlled land in excess of five hundred acres, which it applies to the planting, cultivation and harvesting of sugar cane.

Respondent believes that the rule is well settled and here applicable that the parties are confined on appeal to the theory upon which the cause was prosecuted and defended in the trial court and that questions which were not raised in the court below can not be raised in the appellate court.

4 Corpus Juris Secundum, Section 241.

The second answer is that the provisions of Act No. 47 basing jurisdiction upon a violation of the provisions of the Organic Act and the penalty provisions of an *ex post facto* character are not separable from the remainder of the Act.

Act No. 47 contains no provision that if any part of the Act is held invalid the remainder of the Act shall not be affected thereby.

This Court has repeatedly held that in the absence of such a provision the presumption arises that the legislature intends an Act to be effective as an entirety.

In *Carter* vs. *Carter Coal Co.*, 298 U. S. 238, 312, the Court said:

> "In the absence of such a provision, the presumption is that the legislature intends an act to be effective as an entirety—that is to say, the rule is against the mutilation of a statute; and if any provision be unconstitutional, the presumption is that the remaining provisions fall with it. The effect of the statute is to reverse this presumption in favor of inseparability, and create the opposite one of separability. Under the non-statutory rule, the burden is upon the supporter of the legislation to show the separability of the provisions involved. Under the statutory rule, the burden is shifted to the assailant to show their inseparability. But under either rule, the determination, in the end, is reached by applying the same test—namely, What was the intent of the lawmakers?"

A somewhat fuller statement of the rule is found in *Williams* vs. *Standard Oil Co.*, 278 U. S. 235, 241.

No showing has been made by the Petitioner to demonstrate the separability of these provisions.

On the other hand, an examination of Acts Nos. 33, 34, 47 and 48, all of which were passed at the same special session of 1935, and forming, as related legislation, parts of a general plan, will convincingly demonstrate that the legislature would not have passed the provisions of Act No. 47 upon which Petitioner now rests without the provisions vesting jurisdiction in the Supreme Court on the ground of violations of provisions of the Joint Resolution and the Organic Act and without the penalties established in the same Act.

Act No. 44 provides for the condemnation of property for works and projects forming part of the plan of economic reconstruction, one of the features of which is "the redistribution or division of lands concentrated in large estates"; the acquisition of sugar properties is authorized.

Act No. 47 makes violation of the Joint Resolution and Organic Act ground for *quo warranto*, confers jurisdiction on the Supreme Court and authorizes the condemnation or the taking of the lands of defendant corporations in the same proceeding.

Act No. 48 makes it a criminal offense to acquire lands "in violation of the provisions of Joint Resolution of Congress of the United States approved May 1, 1900". And the information or complaint in this case states that these acts declare the public policy of the People of Puerto Rico.

IV

Petitioner maintains that the allegations of the complaint of violation of insular statutes were sufficient and that in any event the judgment of the Supreme Court of Puerto Rico should not have been reversed on such a question of local pleading and procedure.

The argument on this point assumes that Petitioner contended or suggested in the Supreme Court of Puerto Rico that the complaint alleged the violation of an insular statute and that the Supreme Court so held and construed the complaint. But the Supreme Court of Puerto Rico did not so hold nor did Petitioner propose such a theory in the trial court. The record is barren of any such suggestion.

V

Petitioner states that the quasi sovereign government of Puerto Rico cannot be estopped from enforcing its stat-

utes limiting the land-holding powers of its domestic agricultural corporations because of delay or lack of action by former insular executive officials or former legislatures, and adds that the majority opinion in this respect is clearly error and appears to be in direct conflict with the decisions of this Court as well as decisions of Circuit Court of Appeal and State Courts cited in the brief. Respondent believes that the opinion or that part of the opinion quoted by Petitioner at page 60 of its brief does not hold that Puerto Rico is estopped to enforce its statutes limiting the ownership and control of land by domestic agricultural corporations by reason of delay and laches.

Obviously the judgment of the Supreme Court of Puerto Rico was not reversed on the ground of estoppel and Petitioner is not injured by the part of the opinion quoted if there is no intention to forfeit land.

The Circuit Court of Appeals obviously felt that an intending forfeiture (confiscation or alienation of Respondent's land) was contemplated and expressed the opinion that in view of its long tolerance of the violations which Act No. 47 makes a ground of confiscation Petitioner should not be permitted to confiscate the land of defendant corporations under the provisions of Act No. 47 for violations occurring prior to the passage of that Act; in other words, that the penalty of confiscation should not operate retroactively.

Petitioner further states that this is not a case simply of past violations. It appears from the record, however, that Respondent in its motion for cancellation of notices of *lis pendens* alleged "That all of the properties specified in the exhibit attached to the complaint, on the margin of the inscriptions of which notice of the complaint was taken by the Registrar of Property of San Juan, Section Two, were acquired by this Respondent prior to the approval

of Acts Nos. 33 and 47, approved by the Legislature of Puerto Rico on July 22, 1935 (Special Session Laws of 1935, p. 418) and August 7, 1935 (Special Session Laws of 1935, p. 530), respectively" (Rec. p. 60).

This allegation was not denied by Petitioner.

Act No. 47 gave Respondent no term within which to dispose of its land holdings as did the statute under consideration in *Kentucky Union Co.* vs. *Kentucky*, 219 U. S. 140.

And after this proceeding was instituted and notices of *lis pendens* filed Respondent could not dispose of the land nor could it confess judgment until the question of the validity and legality of the penalties imposed by Act No. 47 was decided.

Conclusion.

The decision of the Court below is correct. There is no conflict of decisions and no question of importance calling for a review by this Court.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRI BROWN,
Counsel for Respondent.

JAIME SIFRE, JR.,
Of Counsel.

January , 1940.

APPENDIX.

IN THE

SUPREME COURT OF PUERTO RICO

Num. 1.

QUO WARRANTO.

THE PEOPLE OF PUERTO RICO,
Plaintiff,

vs.

THE FAJARDO SUGAR CO. OF PORTO RICO, THE FAJARDO SUGAR GROWERS ASSOCIATION, AND THE LOIZA SUGAR COMPANY,
Defendants.

Opinion of the Court delivered by Mr. Chief Justice DEL TORO. San Juan, Puerto Rico, June 4, 1936.

Upon the petition of the Attorney General of Puerto Rico, this Court, on January 28 last, authorized the filing of an information in the nature of *quo warranto* in this case, and the defendants were granted until the 28th of the following February to demur, answer, or enter any other proper plea.

On the 5th of February, the plaintiff filed a motion for an inspection and copy of certain books, papers, and documents in the possession or under the control of the defendants, and on the 15th of the same month the latter presented their written oppositions thereto, based, among other grounds, upon the claim that this Court, for various reasons which they stated, had no jurisdiction to act in the matter.

The plaintiff moved to strike out from the oppositions certain questions of law raised therein, among them, those relating to the jurisdiction. Both parties were heard on

this point and the Court ruled that it was not possible to decide the question of inspection while disregarding that of jurisdiction and set March 16, 1936, for further hearing the parties. They were so heard, fully, and in addition they filed briefs in support of their respective contentions, the last of such briefs being filed on May 16, 1936.

What is the question involved? The holding of real estate by agricultural corporations. What does The People of Puerto Rico demand through the Attorney General? That this Court give judgment of ouster from the franchise as against The Fajardo Sugar Company of Puerto Rico and the Loiza Sugar Company, decreeing their immediate dissolution, prohibiting them from continuing to do business in Puerto Rico, and imposing on them the proper fines, and as regards The Fajardo Sugar Growers Association, that the same be adjudged to cease doing business in this Island; together with any other relief which in equity and justice may be proper as against them all.

It is substantially alleged in the information that The Fajardo Sugar Company of Puerto Rico is a corporation organized under the laws of this Island, on February 28, 1919, its objects being to engage in agriculture and the manufacture of sugar and it being stipulated in its articles of incorporation that its right to own or control land in Puerto Rico would be limited to five hundred acres, as provided by section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900; and that, notwithstanding this, it acquired all the properties of The Fajardo Sugar Company, a corporation organized under the laws of the State of New York in 1905, engaged in agriculture and the manufacture of sugar in this Island, which, by itself, as well as through the defendant, The Fajardo Sugar Growers Association, had acquired from time to time the ownership or control of land in Puerto Rico in the aggregate amount of about thirty thousand and seven hundred acres.

As regards The Fajardo Sugar Growers Association it is substantially alleged in the information that it is an entity describing itself as a joint-stock association which

was organized under the laws of the State of New York to engage in the growing of sugar cane, and to acquire by purchase, lease, or otherwise, such land as may be necessary to carry out its purposes, and that it having complied with the requirements prescribed by the Private Corporation Act of Puerto Rico, approved March 9, 1911, it was authorized to do business in the Island. Then follow several averments tending to show that it is in fact a corporation.

With respect to the other defendant, Loiza Sugar Company, the information substantially alleges that it is a corporation organized under the laws of Puerto Rico for the purpose of purchasing and leasing land and planting or harvesting sugar cane. As in the case of the defendant first above mentioned, its articles of incorporation specifically provide that its right to own or control real estate, shall be limited to five hundred acres, in accordance with the Joint Resolution of Congress already cited, in spite of which it owned or controlled, on October 6, 1925, about seven thousand thirty-eight acres of land in the Island.

It is further substantially alleged in the information that on October 6, 1925, defendant The Fajardo Sugar Company of Puerto Rico acquired by purchase the entire capital stock of the Loiza Sugar Company, and still controls 99% thereof and thereby manages and controls its business; that by a public deed executed on January 10, 1935, the Loiza Sugar Company conveyed to The Fajardo Sugar Growers Association for the purpose of concealing the identity of the true owner thereof, all the agricultural lands which it held or controlled in Puerto Rico, except some five hundred ninety-eight acres which it still holds and controls in its own name.

Reference is made in the information to certain instruments executed which, as petitioner claims, show the interdependence of the three defendants; and it is textually alleged: "The total amount of agricultural land which is held or controlled at the present time by said defendant, The Fajardo Sugar Company of Porto Rico, either by it-

self or through its subsidiaries, or agencies above mentioned, and upon which it is engaged at present in agriculture, as already stated, amounts to some 23,800 acres."

The information concludes by alleging that the ownership or control by the defendants of lands concentrated into large estates is contrary to the public policy of Porto Rico and is in conflict with the economic welfare of the people of the Island; and it sets forth the facts and circumstances upon which such allegation is based.

The Joint Resolution of which mention has already been made, was approved eighteen days after the territory of Puerto Rico was organized by the Congress of the United States. By its third section, as the same appears on page XXXV of the Revised Statutes and Codes of Puerto Rico, 1902, it is provided as follows:

> "Section 3.—That all franchises, privileges or concessions granted under section thirty-two of said Act shall provide that the same shall be subject to amendment, alteration, or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends; and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in

agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable."

The word "corporation" used in the original English text was erroneously rendered "*sociedad*" in Spanish. We shall proceed on the assumption that the correct translation is "*corporación*".

On March 1, 1902, the Legislative Assembly created by the Organic Act of April 2, 1900, enacted a law establishing *quo warranto* proceedings, and on March 9, 1911, another law entitled "AN ACT to establish a law of private corporations." Both laws were in force at the time that the defendant corporations, The Fajardo Sugar Company and Loiza Sugar Company, were organized and commenced to do business in this Island, and under the provisions of the second of these laws the other defendant was authorized to do business in our community.

Section 2 of the first of the said laws provides, in its pertinent part, "That in case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General or any fiscal of the respective district courts, either of his own accord or at the instance of any individual relator, may present a petition to the district court of competent jurisdiction, for leave to file an information in the nature of *quo warranto* in the name of The People of Puerto Rico. * * *"

Section 6 provided:

"In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise, and fine such

person or corporation for usurping, intruding to, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions; *Provided*, That instead of judgment of ouster from a franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense."

Section 3 of the Private Corporation Act in so far as now pertinent says:

"Section 3. Every corporation has power:

* * * * *

"4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however*, That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred." Laws of 1911, page 87.

Accordingly, in deciding that the question of the holding by a corporation of lands in excess of five hundred acres was not a proper one to be raised by a registrar of property or to be considered and determined within an administrative appeal taken from a decision of such registrar, this Court, after a careful study of the Organic Act of 1900 and of the applicable jurisprudence, said:

"So that ample provision is made in the law by which any violation of the Organic Act may be thoroughly investigated and prosecuted by the Attorney General. If there is any doubt how far the powers of the registrar extend, it is made clear by the provisions of the Organic Act and by section 73 of the Political Code. The Attorney General is the exclusive officer in whom

is confided the right to initiate proceedings for escheat or attack the right of a corporation to hold land. Without some such judicial or quasi-judicial proceedings a corporation might be deprived of some of its property rights without due process of law." *Compañía Azucarera de Carolina* v. *Registrar of Property*, 19 P. R. R. 143, 151-152 (153).

Similarly, in referring to the above and other decisions to the same effect, it has recently declared:

> "Ever since that time, or more than twenty years ago, the Judicial Power has spoken with entire clearness and has shown the way. The Federal and the Insular, Executive and Legislative Powers, and the community in general were advised. They are the ones who are called upon to act." *Baetjer* v. *Registrar*, 48 P. R. R.,

The Joint Resolution of 1900 is still in full force and effect. In enacting, in 1917, the second Organic Act for Puerto Rico, which is the one now in force, Congress provided by section 39 of the Act:

> "That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate." Laws of Porto Rico, 1917, volume 2, p. 54.

The *Quo Warranto* Act was amended in 1931 and in 1935. The amendment of 1931 is of no importance. In 1935, there were enacted two amendatory laws. The first one, Act No. 33 of July 22, 1935, in its pertinent part, literally copied, reads as follows:

> "An Act to confer upon the Supreme Court of Puerto Rico exclusive original jurisdiction in *Quo Warranto* proceedings that the Government of Puerto Rico may institute for violations of the provisions of section 752, Title 48, United States Code, and for other purposes.

"*Be it enacted by the Legislature of Puerto Rico:*

"Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto.*"

The second, Act No. 47, approved August 7, 1935, in so far as now pertinent, also textually transcribed, reads thus:

"An Act to amend sections 2 and 6 of 'An Act establishing *Quo Warranto* proceedings, approved March 1, 1902, as amended by Act No. 37, approved April 24, 1931, and for other purposes:

"*Be it enacted by the Legislature of Puerto Rico:*

"Section 1.—Section 2 of An Act entitled 'An Act establishing *Quo Warranto proceedings*', approved March 1, 1902, is hereby amended as follows:

"Section 2.—In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of

another person, may file before any district court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or make contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; * * *.

"'When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"'In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain.'

"Section 2.—Section 6 of An Act entitled 'An Act establishing Quo Warranto proceedings,' approved March 1, 1902, is hereby amended as follows:

"'Section 6.—In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; * * *.

"'Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

"'The violation of an order prohibiting the doing of business after final judgment is rendered shall be punished by a maximum fine of five hundred (500) dollars for each day such entity may continue in operation, enforceable on the property of the entity, and the persons representing it shall be guilty of contempt of court, punishable by imprisonment for a minimum term of from one to six months in jail.

"'Whenever judgment is rendered in favor of any defendant, such defendant may recover costs from the plaintiff, including a reasonable attorney's fee.

"'For the purpose of fixing the value of the property, The People of Puerto Rico, through its agents or representatives, is authorized to enter the properties the object of the controversy, whatever their nature or condition may be.'"

Such are the facts and the laws involved in this case.

The procedure to be followed was fixed by the Legislature. The jurisdiction of this Court seems to be something not subject to any doubt. Yet, everything has been questioned in a manner so complicated and laborious that it has been no easy task to revert to the first impression.

The Fajardo Sugar Growers Association maintains that it is not a corporation and that, not being one, it can not be charged with the violation of any law by reason of its owning or controlling more than five hundred acres.

Conceding without holding that this is so, it is no obstacle, in view of the acts charged against this entity in the information, to our concluding that it has properly been brought into court. If the Court has jurisdiction to pass upon the acts committed by the other two defendants, whose corporate character is beyond question, it also has jurisdiction to pass upon its acts, since all such acts, it is alleged, are so interrelated that they constitute a single transaction.

In view of the terms of the information, the central entity violating the law appears to be the defendant, The Fajardo Sugar Company of Porto Rico. Defendants The Fajardo Sugar Growers Association and Loiza Sugar Company are, according to the information, its subsidiaries; they constitute the agencies employed for controlling and holding land in excess of the amount permitted by the law and by its own articles of incorporation, or franchise. At this stage of the proceeding, we must be guided by the allegations of the information.

Defendant The Fajardo Sugar Company attacks Acts Nos. 33 and 47 of 1935 as being unconstitutional because, in its judgment, they amend the Joint Resolution of 1900 enacted by Congress and invade the legislative sphere reserved to the latter; because the Legislature of Puerto Rico has no power to impose penalties for violations of the laws of the United States; because they contain more than one subject and subjects not clearly expressed in their titles; because they revise, amend, or extend provisions of the laws of the United States and of Puerto Rico without re-

enacting and publishing at length such laws; because Act No. 47 is an *ex post facto* law, impairs the obligation of contracts, and deprives the defendant of due process of law; and because both acts are so indefinite as to be rendered void.

The defendant Loiza Sugar Company sets up similar objections to the above, and in addition it maintains that the Joint Resolution of Congress is unconstitutional as being discriminatory and arbitrary.

Under the view we have taken of the case, the consideration and decision of all questions raised relating to the imposition of new penalties by the said laws can and should be dispensed with for the present, confining ourselves to the examination and determination of the question whether such laws could confer and did confer upon this Court original jurisdiction to take cognizance of *quo warranto* proceedings brought against corporations holding lands in excess of the authorized amount.

It is provided in the eighth and ninth paragraphs of section 34 of our Organic Act that:

> "No bill except general appropriation bills shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.
>
> "No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length."

We know the titles of Acts Nos. 33 and 47. The first of these titles begins thus: "An Act to confer upon the Supreme Court of Puerto Rico exclusive original jurisdiction in *Quo Warranto* proceedings. * * *" It is conclusive. The second begins as follows: "An Act to amend sections 2 and 6 of 'An Act establishing *Quo Warranto*

proceedings. * * *." The amendment includes the jurisdiction. The constitutional precept has been substantially complied with.

But it is insisted that Act No. 33 conferred jurisdiction to take cognizance of violations of a law of Congress and Act No. 47 amended the said law by imposing penalties, as to all which the Insular Legislature has no power.

It is evident that the Legislative Assembly of Puerto Rico has no power to invade the sphere of action of Congress, nor to amend any Federal statute. Therefore, should Acts Nos. 33 and 47 have the effect of invading that sphere or amending the Joint Resolution of May 1, 1900, they would be without any validity. But in our judgment, in so far as the question of jurisdiction is concerned, the said acts do not invade the field reserved to Congress, nor to amend its Joint Resolution cited. Whether such invasion has occurred as regards the new penalties is a separable question, which, as we have stated, need not be now considered.

Puerto Rico is a fully organized territory. It has many of the attributes of, and may be compared in some respects to, a state of the Union. In the exercise of its legislative powers, it enacted the Private Corporation Act to which we have previously referred, and all corporations organized under such act remain subject thereto.

It is incumbent on Puerto Rico not only to enact, as it enacted, laws regarding corporations, but also to watch for their execution. For this reason it enacted, in 1902, the law establishing *quo warranto* proceedings; a law of which the defendants had knowledge and to whose provisions they were subjected from the moment they were organized and began to act.

The Loiza Sugar Company alleges that "the limitation arising from the Joint Resolution of 1900 does not merge into the local articles of incorporation nor lose its source, identity, or character as a restriction imposed by the Congress of the United States."

It must be conceded that the limitation as to the holding of lands by corporations had its origin in the Joint Resolution of Congress; but this circumstance, as the plaintiff says, "has nothing to do and should never be confused with the body of juridical relations arising therefrom and which is the one having a bearing upon the solution of the questions at issue in this proceeding. Within the limits of the Constitution of the United States ("constitution" in the broad sense which includes governmental traditions), due to a most delicate adjustment, there coexist, without friction and within their respective spheres, a federal government and the governments of the states and territories. In order to preserve that fine balance and the separation of powers, the federal government takes great care not to interfere in purely local matters pertaining to the states or the territories. For instance, the federal government never interferes directly in the regulation of corporations created or authorized to do business by the state or territorial sovereignties."

As an aid to clearly establishing that in the case of Puerto Rico the American tradition of government was followed, it seems advisable to transcribe below what was said by the Supreme Court of the United States, speaking through Mr. Justice Moody, in *Martinez* v. *Asociación de Señoras Damas del Santo Asilo de Ponce*, 213 U. S. 20, 25, thus:

> "By the treaty of peace (30 Stat. 1754), Spain ceded Puerto Rico to the United States and thereby parted with all sovereignty over that island. Careful provision was made that the cession should not impair the property or rights of corporations, associations or individuals. Article VIII. It is clear, however, that thereafter the duty to protect property and rights within the ceded territory rested upon the United States. An opportunity was afforded to Spanish subjects, natives of the peninsula, to preserve their allegiance to the crown of Spain by making within a limited time a declaration to that effect. Article

IX. This article obviously had no reference to corporations. No other provisions of the treaty seem relevant to the question before us.

"We are of opinion that the cession of Porto Rico by Spain to the United States severed all relations between Spain and this corporation, and that thereafter it cannot be regarded in any sense as a citizen or subject of Spain. Spain has no duty to or power over it. * * *

"The next question is whether the plaintiff corporation is a citizen of the United States. Its status during the period between the cession and the passage of the act to provide a civil government for the island need not be determined. That act created a form of government for Porto Rico and its adjacent islands, in which there was exhibited, with some modifications, the characteristic American separation of the legislative, executive and judicial powers * * * and the scope of the legislative power is fully described in paragraph 32, as follows:

"'That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities, so far as may be necessary, and to provide and repeal laws and ordinances therefor; and also the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof: *Provided, however,* That all grants of franchises, rights, and privileges or concessions of a public or *quasi*-public nature shall be made by the executive council, with the approval of the governor, and all franchises granted in Porto Rico shall be reported to Congress, which hereby reserves the power to annul or modify the same."

"In the form of government, which is typically American, the creation and control of corporations is exclusively a legislative function. We are of opinion that the effect of the organic act is to intrust that function, so far as it relates to a corporation of the kind under consideration, whose essential qualities need not be repeated, to the government of Porto Rico; and that such corporation is now, if a citizen of any country, a citizen of Porto Rico. We need not consider whether the corporation has more than a *de facto* existence, subject to the will of the Porto Rican legislature."

This holding of the Supreme Court remains applicable even after the enactment of the second organic act, as what Congress did by such act was to continue carrying out its clear purpose to establish in this Island a typically American form of government.

Guided by that rule, we think that the plaintiff is right when it maintains, referring to the Joint Resolution of Congress, that "it is a statute of a purely constitutional character; an amendment to our Organic Act having no other function or scope than to limit the power delegated to our Legislature to create and regulate the juridical persons engaged in agriculture".

As an indication that Congress reserved to itself the power to regulate its prohibition, the defendants strongly rely upon the provisions enacted in the second part of paragraph second of section 39 of the Organic Act of 1917, thus:

"That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres."

However, it is a fact that the amendment, as originally offered and as adopted by the Senate, contained at the end

of section 39 the following provision: "That the right to legislate further upon this subject is reserved to Congress." (Congressional Record, February 10, 1917, p. 3385.) The House disagreed. The Senate acquiesced. (Id., February 23, p. 3995.) Thereupon this provision was stricken out and the act approved in the form known to us.

The resolution provides:

> "* * * and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres. * * *"

The Organic Act as a whole shows that Congress was establishing a territorial form of government, endowed with the same control over the corporations created by it or doing business within its limits as might be possessed by a state or any other territory. Consequently, since the franchises are granted by Puerto Rico and its Government has control over the corporations existing within its limits, the inference is unavoidable that a violation of the franchise or the holding of land in excess of five hundred acres, is a local question. It is inconceivable that violations of a corporate character or of the Organic Act should be excluded from the control of Puerto Rico. It might be equally possible to say that a violation of the so-called "bill of rights" is a matter of exclusive federal jurisdiction, and similarly in regard to any other provision of the Organic Act.

The question of whether the Insular Legislature could confer on this Supreme Court original jurisdiction is one which we regard as settled in the affirmative by the law and the jurisprudence. Section 40 of the Organic Act of 1917. *Municipality of Ponce* v. *Roman Catholic Church*, 210 U. S. 296.

The case of *Ferris* v. *Higley*, 87 U. S. 375, invoked by defendant The Fajardo Sugar Company, does not change our views. It has been extensively analyzed and discussed by the plaintiff in its second brief (Record, pp. 10-16; 783-789). We have nothing to add thereto.

As regards the contention that the Legislature of Puerto Rico can not deprive the Federal Court of jurisdiction, it will suffice to say that the fact that by Act No. 33 exclusive jurisdiction is conferred on this Court, can not and should not be interpreted in the sense of impairing any concurrent jurisdiction which the Federal Court may have. The term used, when correctly interpreted, applies solely to those courts which the Legislature has power to organize or reorganize, that is, the Insular courts. Statutes should be interpreted with a view to vitalizing them, unless they really violate the paramount law, the Constitution.

Lastly, and without going into a detailed discussion, we will say that, in our judgment, the Joint Resolution of Congress of May 1, 1900, is neither discriminatory nor arbitrary in itself, or to any extent rendering the same unconstitutional.

In constituting the Island of Puerto Rico into an organized territory, Congress thought that, in view of its territorial extent, its lands might be monopolized by one or more powerful corporations and; considering that this result might be harmful to its future development, it fixed its policy on the matter by prescribing a limitation on the powers of the new-born Legislature, which was to have charge of the enactment of laws respecting corporations.

Corporations may be restricted by a constitution. We fail to see, especially in an agricultural community, that a limitation as to the number of acres that may be controlled by a corporation engaged in agriculture, or the prevention of an agricultural monopoly, constitutes an unjust discrimination. And nothing has been cited to us showing that the unrestricted privilege existing in regard to other persons or corporations causes any prejudice.

It may be argued whether the limit of five hundred acres was or was not wisely chosen, but not that it is unreasonable. If the manufacturing business is separated from the agricultural business, it is possible to conceive the establishment of corporations which will erect and operate great factories for the extraction of sugar from cane, grown in

dependently by tens or hundreds of individuals or corporations engaged in this work upon their directly managed lands, thereby increasing business activity and multiplying the number of efficient, self-supporting citizens and families which, in well-organized communities, constitute the safest and most stable foundation for a normal and orderly progressive life.

The fact that for corporations engaged in agriculture there should have been fixed a definite limitation—five hundred acres—leaving the determination of that pertaining to other corporations to such as may be reasonably necessary to carry out their objects, does not involve a discrimination.

It is difficult to conceive how the other corporations will need five hundred acres of land for the erection of their factories, for the development of their business; but perhaps one of them, for instance, one engaged in the mining business, might find it necessary to extend its holdings in consequence of its investigations, and in such a case it would indeed be unreasonable to destroy the unity of exploitation by virtue of a previously fixed limitation.

By reason of the foregoing and all that appears from the record itself, the objections raised by the defendants to the jurisdiction of this Court must be overruled and the case ordered to be proceeded with in accordance with the law.

(Sgd.) EMILIO DEL TORO,
Chief Justice.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 582.

THE PEOPLE OF PUERTO RICO,
Petitioner,

v.

RUBERT HERMANOS, INC.,
Respondent.

BRIEF FOR RESPONDENT.

HENRI BROWN,
Attorney for Respondent.

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Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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(2) That there was litigated in the Supreme Court of Puerto Rico any issue relating to the enforcement of said Act No. 30 or any other local statute, or that the Supreme Court by its decree enforced or purported to enforce any such local statute;

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 582.

THE PEOPLE OF PUERTO RICO,

Petitioner,

v.

RUBERT HERMANOS, INC.,

Respondent.

BRIEF FOR RESPONDENT.

Jurisdiction.

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925.

Opinions Below.

The opinion of the Circuit Court of Appeals for the First Circuit is reported in 106 F. (2d) 754. The opinion of the Supreme Court of Puerto Rico is reported in 53 P. R. 779 Spanish Edition. An English translation appears in the Record, pages 285-304.

Statement.

The People of Puerto Rico, here Petitioner, filed an Information (hereinafter sometimes referred to as the complaint, R. 2-5) in the nature of *Quo Warranto* in the Supreme Court of Puerto Rico against Respondent, Rubert Hermanos, Inc., a domestic corporation, in which it prayed that the Court adjudge that the Respondent had forfeited its franchise, order its immediate dissolution, prohibit it to do business in Puerto Rico, and to impose a proper fine with all of the pronouncements which in equity and justice are pertinent in the premises. As ground for forfeiture of respondent's corporate franchise, the petitioner alleged that respondent, notwithstanding the express prohibition contained in its Articles of Incorporation, and further, in open violation of Joint Resolution 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716; Title 48, U. S. C. Section 752 as to Sec. 3), owns and controls at the present time, in full ownership, and has owned and controlled several estates in excess of 500 acres, which it devoted to the planting, cultivation and harvesting of sugar cane, and that the holding and control by the respondent of land forming large estates is contrary to the public policy long established and frequently declared by the People of Puerto Rico and is clearly in conflict with the economic well-being of the People of Puerto Rico.

After motion to strike certain parts of the Information had been granted in part and denied in part (R. 43-44) and an amended Information leaving unchanged the ground or grounds above specified filed, Respondent demurred to the amended Information, *setting up as grounds of the demurrer the invalidity of the statutes purporting to confer jurisdiction upon the Supreme Court* and among other grounds that the amended Information is ambiguous,

unintelligible and uncertain in that it set out several causes of action, and that such causes of action are not separately stated (R. 51-58). The demurrer was overruled (R. 81-82) on the authority of an opinion and order overruling what the Court stated to be identical demurrers filed by respondents in *People of Puerto Rico* v. *Fajardo Sugar Company of Porto Rico, et al.* (R. 68-81).

Immediately upon the filing of the Information in the Supreme Court of Puerto Rico, Petitioner filed notices of *lis pendens* in the Registry of Property in which the real properties of Respondent corporation were inscribed. Respondent filed a motion for an order cancelling such notices of *lis pendens* (R. 59-65). Petitioner filed an answer opposing this motion (R. 65-66). The court denied the motion to cancel the *lis pendens* notices (R. 82) on the authority of its opinion in denying what was stated to be an identical motion in *People of Puerto Rico* v. *Fajardo Sugar Co. of Porto Rico, et al.* (R. 83-87). In its demurrer to the amended Information among other grounds of invalidity of jurisdictional statutes specified by Respondent, it was urged that the penalty provisions in Act No. 47 of the Special Session of the Legislature of Puerto Rico of 1935 made the act an *ex post facto* law (R. 87). The same contention was raised in the motion for cancellation of notices of *lis pendens* (R. 64).

The answer to the amended Information was filed by Respondent (R. 89-98). The cause was tried by the court composed of the Chief Justice and Associate Justices of the Supreme Court of Puerto Rico. Respondent presented no evidence, and at the close of the evidence of Petitioner it made a motion in writing to dismiss (R. 121-128), which was overruled by the court (R. 129). A judgment was entered decreeing the forfeiture and cancellation of the charter of Respondent as well as its immediate dissolution

and winding up, including costs and disbursements in the proceeding in the sum of $2,000 attorneys' fees and a fine in the sum of $3,000 (R. 305-306) with an opinion (R. 285-304). The reasons and grounds upon which the judgment was entered, as stated in the judgment in accordance with the opinion, are:

> "It is adjudged and decreed that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own Articles of Incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres" (R. 305).

It is stated that

> "Mr. Justice Wolff concurred in many parts of the opinion and in the first pronouncement of the judgment. As regards some of the other pronouncements he has some doubts as to the power of the court, which might perhaps be cleared up after a more careful study, and he has also some doubts, even if the court had such power, whether the same should be exercised in the way it has been done, reserving to himself a fuller statement of his views" (R. 305).

Respondent appealed from the judgment to the Circuit Court of Appeals for the First Circuit, stating in its brief that no questions of fact were involved in the appeal, and that the ground upon which the appeal was based was that the Supreme Court of Puerto Rico is without jurisdiction

to entertain the proceeding because the two acts that purport to confer jurisdiction are null and void. Summarily stated, appellant's contention was that Acts 33 of July 22, 1935 and 47 of August 7, 1935, by which jurisdiction of *quo warranto* proceedings founded on violations of Section 752, Title 48, U. S. C., which is the Joint Resolution of Congress of May 1, 1900 carried into the present Organic Act of Puerto Rico by Section 39 thereof, are void because the Legislature of Puerto Rico had no power to enact them and because both Acts violate Organic Act provisions as to the subject and titles of bills and amendment of laws; and that no jurisdiction is vested in the Supreme Court of *quo warranto* proceedings based on acts of a corporation *ultra vires* its articles of incorporation. (Assignment of errors, R. 306-310.) In the brief filed by Petitioner as appellee in the Circuit Court of Appeals, the theory that the proceeding was in part based upon the violation of any statute of Puerto Rico was for the first time suggested, and the claim for the first time advanced that the allegations contained in the Information were susceptible of such a construction.

The opinion of the Circuit Court of Appeals and the dissenting opinion of Judge Peters are reported in 106 F. (2d) 754. The court held that Acts No. 33 and No. 47 are invalid for the reason that they amend and enlarge the scope of the Joint Resolution of Congress of May 1, 1900, and because they confer jurisdiction upon the Supreme Court of Puerto Rico to impose penalties for violations of that Resolution. It held that the Supreme Court of Puerto Rico is a statutory court and its jurisdiction defined by statute; that unless a case comes strictly within the statute defining its jurisdiction, it cannot proceed; and that the allegation in the Information that the Respondent is violating a prohibition contained in its Articles of Incorporation

is not an allegation that Respondent is violating a statute of Puerto Rico or of a ground resting upon which jurisdiction in *Quo Warranto* proceedings is vested in the Supreme Court of Puerto Rico by Act No. 47. Whether or not the provisions of Act No. 47 which make violations of Puerto Rican statutes a separate ground for *Quo Warranto* are separable from the invalid provisions, the court holds that the allegations of the Information are insufficient to constitute a good charge upon this separate ground. In his dissenting opinion Judge Peters agreed with the principles of law enunciated in the majority opinion but felt that a somewhat less technical application of them would result in sustaining the action of the local court. He thought that by permissible construction the words "in violation of the express provisions of the Organic Act of Puerto Rico or any of its statutes", found in Section 1 of Act No. 47, could be made to read "in violation of restrictions imposed upon it (the corporation) by the Legislature as required by the express provisions of the Organic Act of Puerto Rico or any of its statutes", but, in any event, that the words "or any of its statutes" in the section of the Act mentioned created a distinct ground for *Quo Warranto* separable from the other and invalid provisions of the Act.

In the final paragraph of the majority opinion, it is said:

> "We do not hold that the People of Puerto Rico has no redress as against the holding of so much agricultural land as contrary to valid statutes of Puerto Rico in the event it proceeds according to law, or through the federal government proceeding for a violation of its laws" (R. 329).

The judgment of the Supreme Court of Puerto Rico is reversed expressly without prejudice to future proceedings

under valid statutes or in the Federal courts based on a violation of Section 39 of the Organic Act or Section 752 of Title 48, U. S. C.

Statutes Involved.

Statutes deemed to be applicable are set out in full or in part in the Appendix.

POINT I.

Act No. 33 of the Legislature of Puerto Rico, approved July 22, 1935, and Act No. 47 of the Legislature of Puerto Rico, approved August 7, 1935, are void because the Legislature of Puerto Rico had no power to enact them, and because they violate provisions of the Organic Law of Puerto Rico.

(a) The Acts amend and change a Federal Statute and in so doing usurp an exclusive power of the Congress of the United States.

(b) The Acts attempt to confer jurisdiction to impose penalties for violations of Federal laws upon Insular Courts and in so doing not only legislate upon matters not within the legislative domain of the Legislature of Puerto Rico, but also violate express provisions of Federal laws.

(c) Assuming that the Legislature of Puerto Rico had power to amend a Federal law, the attempted amendment of the Joint Resolution of Congress No. 23, approved May 1, 1900, and of Section 39 of the Organic Act of Puerto Rico, by these statutes, is ineffective for failure to comply with the provisions of Section 34 of the Organic Act of Puerto Rico. (See Point III, *infra*, p. 40.)

(d) The penalties created by Act No. 47 convert the Act into an *ex post facto* law.

(e) The language of Act No. 47 defining the grounds for *Quo Warranto* of which the Supreme Court of Puerto Rico is given jurisdiction is so vague and uncertain as to make the act inoperative and void.

(a)

It was the intention of the Legislature of Puerto Rico to amend the Joint Resolution of Congress continued in effect by Section 39 of the Organic Act of Puerto Rico. The language of Act No. 33 and of Section 1 of Act No. 47 clearly fixes and limits the grant of jurisdiction to the Supreme Court of Puerto Rico. The particular words, "Section 752, Title 48, United States Code", and "the Organic Act of Puerto Rico", have plain and well-settled meanings; but, if resort may be had to extrinsic aid to ascertain the intention of the Legislature, the only sources available are to be found in other legislation upon the same subject, and particularly the several Statutes passed at the same Session which form a body of related legislation obedient to one general plan. These Statutes, Acts Nos. 33, 44, 47 and 48, all passed at the Special Session of 1935, are alleged in the Amended Information to declare the public policy of The People of Puerto Rico. The decisions of the Supreme Court of Puerto Rico which were offered in evidence by Petitioner and are printed as Plaintiff's Exhibits Nos. 5, 6, 7, 8 and 9 (R. 198, 198, 199, 203, 204) are also available. (Relevant parts of Acts Nos. 33, 44, 47 and 48 appear in the Appendix, pp. 82, 83, 85, 89, and Sec. 39 of the Organic Act appears in the Appendix at p. 73.)

These statutes and decisions disclose that the notion obtained generally that in order to disperse large landholdings by sugar corporations in Puerto Rico deemed to be in

excess of the limitation imposed on the Legislature of Puerto Rico by the Joint Resolution of Congress in legislating corporate charters or franchises, it was necessary to add penalty clauses to the Joint Resolution itself and the further notion that the Joint Resolution was in some way so directed to the corporations themselves as to be susceptible of violation by such corporations. In *Harry N. Baetjer, et al.* v. *Registrar of Property of Guayama*, decided June 14, 1935 (R. 204-228), the Supreme Court of Puerto Rico declares that more than twenty years before it had pointed out the remedy open to Insular authorities to cure excess landholdings by corporations. It said:

> "The Federal and the Insular Executive and Legislative Powers, and the community in general were advised. They are the ones who are called upon to act" (R. 224).

This advice, according to the court, was first conveyed in the opinion in *Compañia Azucarera de Carolina* v. *Registrar of Property*, 19 P. R. R. 143, decided February 27, 1913 (R. 188-198), as follows:

> "The Organic Act in section 21 provides that the Attorney General will have all the power and discharge all the duties provided by law for an attorney of the Territories of the United States, in so far as the same are not locally inapplicable.
>
> And by section 771 of the Revised Statutes of the United States, among other duties it is made the duty of every district attorney to prosecute all civil actions in which the United States are concerned; and by other sections attorneys for the Territories are given the same powers as the United States district attorneys, so that its provisions would seem to determine who is the officer who shall look after the interest of Puerto Rico and who shall bring actions to recover any fine of forfeiture.

Moreover, by section 73, of the Political Code, as it has been amended by the laws of 1906, it is provided that the Attorney General, upon the request of the Commissioner of the Interior, shall institute suits for the discovery of all immovable and movable property to which The People of Puerto Rico may be entitled under the laws of escheat, or in and to which it has any other claim.

So that ample provision is made in the law by which any violation of the Organic Act may be thoroughly investigated and prosecuted by the Attorney General. If there is any doubt how far the powers of the registrar extend, it is made clear by the provisions of the Organic Act and by section 73 of the Political Code. The Attorney General is the exclusive officer in whom is confided the right to initiate proceedings for escheat or attack the right of a corporation to hold land. Without some such judicial or quasi-judicial proceedings a corporation might be deprived of some of its property rights without due process of law" (R., 196).

The Supreme Court thus as early as 1913 considered that the remedy, whatever form it may take, is for a "violation" of the Organic Act.

The Concurrent Resolution of the House and Senate of the Legislative Assembly of Puerto Rico, February 13, 1935, printed as Plaintiff's Exhibit 15 at pages 255-262 of the Record, proposed that Congress authorize the Legislative Assembly of Puerto Rico to levy a progressive land tax on estates exceeding 500 acres as a means of compelling corporations holding lands in excess of 500 acres to dispose thereof (R. 260). The Concurrent Resolution points out the fact that entities other than corporations are holding lands in excess of 500 acres and expresses the desire of the Legislature that the provisions of the Joint Resolution limiting land holdings should be extended by Congress to

include such entities and individuals as well. Congress took no action.

The Foraker Act which is also the first Organic Act of Puerto Rico, continued in force the Code of Commerce which provided for the organization and prescribed the powers of those associations of individuals and capital called "sociedades", a term usually translated in English as "partnerships". The partnerships so authorized possessed characteristics practically identical with the full liability and limited liability partnerships known to the Common Law and existing in the several States, except as to the kind of "sociedad" denominated "sociedad anonima por acciones" which possessed all of the characteristics of corporations in Continental United States. At the time that the Joint Resolution was passed, lands aggregating in many instances several thousand acres were owned by partnerships or "sociedades" formed under the provisions of the Code of Commerce or the Civil Code of Puerto Rico, and are today so owned by such partnerships, all of which under the laws of Puerto Rico are entities.

To the legislative mind the defect or mischief in the existing laws to be remedied was the absence of penalty provisions in the Joint Resolution of Congress without which it was felt excess landholdings by corporations could not be effectively dealt with and prevented. The first Act of the Legislature enacted to effect this remedy was Act No. 33 by which what was deemed to be a new ground of *Quo Warranto*, namely, "violations of the provisions of Section 752, Title 48, U. S. C.", was created, and of *Quo Warranto* proceedings based on this new ground exclusive jurisdiction was vested in the Supreme Court of Puerto Rico.

The Legislature, however, wished to impose severe penalties upon corporations violating Section 752 of Title 48,

U. S. C., and also to facilitate the acquisition of lands, sugar centrals and factories for the purposes specified in Act No. 44 then in process of passage and shortly to be passed at the same Session.

For this purpose Act No. 47 was enacted. The violations made a ground of *Quo Warranto* in this Act are violations of the "express provisions of the Organic Act of Puerto Rico or of any of its statutes". The Supreme Court in the judgment appealed from, and Petitioner seems to be of the opinion that violations of express provisions of the Organic Act of Puerto Rico in Act No. 47 mean the same thing as violations of Section 752 of Title 48, U. S. C. in Act No. 33, and that both mean the Joint Resolution of May 1, 1900. It may well be that in passing Act No. 47 of 1935 the Legislature intended to supersede and thereby repeal Act No. 33 of 1935. The intention of the Legislature cannot be determined from the language used in either act. If Act No. 47 did effect a repeal of Act No. 33, then in such event the entire case of Petitioner must necessarily rest on Act No. 47.

Upon the assumption of Petitioner, to the ground of *Quo Warranto* created by Act No. 33, Act No. 47 added that of violation "of any of its statutes". It is possible that among the statutes contemplated in this omnibus provision, Act No. 48, approved the same day as Act No. 47, was included. This latter Act is entitled "An Act to impose penal sanction for violation of provisions contained in Section 3 of the Joint Resolution of the Congress of the United States of May 1, 1900 regarding the purchase, sale or possession of real property in excess of five hundred (500) acres, and for other purposes". Section 2 of the Act prescribes the penalties for violations by corporations. It would seem clear that the Legislature in Act No. 48 employed the words "violations of provisions contained in Section 3 of

the Joint Resolution of the Congress of the United States of May 1, 1900" with the same meaning as violations of the express provisions of the Organic Act of Puerto Rico in Act No. 47 and "violations of the provisions of Section 752, Title 48, U. S. C." in Act No. 33. As to proceedings of *Quo Warranto* based on the grounds of the exercise of rights, performance of acts or making of contracts "in violation of the express provisions of the Organic Act of Puerto Rico, or of any of its statutes", Act No. 47, like Act No. 33, we submit, attempts to vest exclusive jurisdiction in the Supreme Court of Puerto Rico.

Of *quo warranto* proceedings based on all other grounds the District Courts retain the jurisdiction vested in them by the original Quo Warranto Act which Act No. 47 amends.

It is submitted that the suggestion of Judge Peters to the effect that the words of Section 1 of Act No. 47 reading:

> "Whenever a corporation * * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes"

may by construction be changed to read:

> "Whenever any corporation * * * exercises rights, performs acts, or makes contracts in violation of [restrictions imposed upon it by the Legislature as required by] the express provisions of the Organic Act of Puerto Rico or of any of its statutes", (R. 331),

is untenable, among other reasons, because it in effect elides the words "or of any of its statutes" by making them surplusage; because upon the same theory of construction violation of the Joint Resolution in Act No. 48 and violations of Section 752 of Title 48 U. S. C. A. become violations of statutory restrictions imposed on corporations by the Leg-

islature as required by such Joint Resolution and Section 752, and because it is contrary to the legislative theory and intention as disclosed by contemporaneous statutes. The Joint Resolution of May 1, 1900, which is continued in force or incorporated in the present Organic Act of Puerto Rico, in and by Section 39 of that act, was not addressed to corporations, nor did it contain provisions which corporations could violate, but Acts Nos. 33, 47 and 48 were drafted and enacted by the Legislature of Puerto Rico under a persistent misconception both as to the meaning and purpose of the Organic Act provisions.

Consistently with this theory the Supreme Court of Puerto Rico in the judgment appealed from specifically found the Respondent guilty of violating the provisions of Joint Resolution No. 23 of the Congress of the United States and of Section 39 of the Organic Law of Puerto Rico (R., 305). It did not find it guilty of violation of any Statute of Puerto Rico. In passing, it may be noted that the words "Joint Resolution of Congress" appear only in Act No. 48. The Joint Resolution is not mentioned either in Act No. 33 or in Act No. 47. Literally the Court finds Respondent guilty of the offenses defined in Act No. 48 rather than of the violations specified in Act. No. 47.

In enacting the Organic Act of Puerto Rico, the Congress was acting as a national and not as a local legislature. It both created the territorial entity and enacted its fundamental law. This power of Congress to create territories and enact Organic Acts for them, conferred by the Constitution, is in itself in the nature of a non-delegable power. It seems obvious that as the Legislature of a State is without power to amend the Constitution of a State, a power which may only be exercised by its people, so the power to amend or change the Organic Act of Puerto Rico can only be exercised by the Congress. We suggest that there is

this fundamental difference between the Federal law considered in *People of Puerto Rico* v. *Shell Co.*, 302 U. S. 253, and the Organic Act of Puerto Rico: that Congress could, as this Court held that it did, delegate power to Puerto Rico to legislate a law or laws similar to the Sherman Act and covering practically the same field, but that the Congress cannot delegate to Puerto Rico the power to make its Organic Act.

Examining the grant of legislative powers under the Organic Act of the Philippine Islands, similar to those contained in the Organic Act of Puerto Rico, in *Posadas* v. *National City Bank*, 296 U. S. 497, 501, the Supreme Court said:

> "* * * The Organic Act of 1916 provides:
>
> "'Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.
>
> "'Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.
>
> "(Section 6 obviously is to be taken distributively—that is to say, as conferring power on the local legislature to deal only with local laws. It, of course, confers no power on the local legislature to alter, amend or repeal an act of Congress.)"

Similar legislation by the Territory of Alaska was declared invalid as an amendment of an Act of Congress in *Auk Bay Salmon Canning Co.* v. *United States*, 300 Fed. 907 (C. C. A. 9th), in which the Court said at page 910:

> "We see no escape from the conclusion that to make the changes in those laws which were attempted to be made by the territorial legislature was to alter, amend and to some extent repeal the acts of Congress relating to the same subject and was within the prohibition of the Organic Act. To extend the period of the closed season, to enlarge the area affected by it, and to increase the penalties for violation of the fishing regulations was to amend and alter the existing law. This conclusion is not obviated by the declaration therein contained that the statute shall not be construed as in any wise to alter, amend, modify or repeal any of the fish laws, and that its purpose is only to provide for further and additional regulations for additional protection to the salmon and insure a future supply thereof, and it is not ground for holding otherwise that the alterations and amendments did in fact result only in greater protection to the fish and were in the interests of and operated to the welfare of the inhabitants of Alaska. The question is what is, and not what ought to be, the law."

Further discussion of this question seems to be unnecessary because we do not understand that either counsel for Petitioner or the *amicus curiae* deny that the Legislature of Puerto Rico cannot amend a law of the United States or that the Organic Act of Puerto Rico is a law of the United States. They contend that Acts Nos. 33 and 47 do not amend the Joint Resolution of Congress of May 1, 1900 or Section 39 of the Organic Act of Puerto Rico.

Two theories are suggested to sustain the validity of these Statutes: (1) that the "provisions of Section 752, Title 48, U. S. C." in Act No. 33 and the "express provisions of the Organic Act of Puerto Rico" in Act No. 47 mean "provisions" of the local Corporation Law of 1911 or the charter of corporations organized thereunder; (2)

that the provisions of the laws mentioned are incorporated by reference in and by Acts Nos. 33 and 47. The answers to these theories are several. We have shown that the intention of the Legislature of Puerto Rico was to amend these laws of the United States. Whether or not these new theories are open to consideration here (Point II) they will be more fully answered hereafter.

Both of these theories import a change in the language of the Joint Resolution or its equivalent in Section 39 of the Organic Act and Section 752, Title 48, U. S. C. If the language of the Joint Resolution is left unchanged, quite obviously there can be no violation by a corporation, and this would be a sufficient answer to a proceeding in *Quo Warranto* brought under either Statute. There would be no violation upon which the action of the Court could be invoked. It is only when the language of the Joint Resolution, together with its meaning and purpose, is changed that either Act No. 33 or Act No. 47 can have any legal efficacy.

The mandate addressed to the Legislature in Section 3 of the Joint Resolution must be converted into a mandate addressed to corporations thereafter created by the Legislature in order that there may be any violation of such provisions, and a change in such provisions constitutes amendment. By either theory of construction contended for, these provisions of the Joint Resolution are first so amended as to constitute a mandate or prohibition directed to corporations that the latter may violate, and to the section thus amended penalties are attached. In short, so construed, the Legislature of Puerto Rico changes a law which is a limitation upon its own powers into a local law and a penal statute. It changes the very nature of the law acted upon. In short, it rests its construction of Acts 33 and 47 on provisions argued to be implicit, rather than

express, in the Joint Resolution or Section 39 of the Organic Act.

The court below correctly held that Acts Nos. 33 and 47 did amend and enlarge the scope of the Joint Resolution of Congress of May 1, 1900.

Either theory, as above pointed out, makes the words "or of any of its statutes" in Act No. 47 redundant and meaningless.

That Acts Nos. 33 and 47 as construed or attempted to be construed by the Petitioner or *amicus curiae* constitute amendments of the Joint Resolution is settled by authority: *In re Lovett*, 2 F. (2d) 307; *In re Barlow*, 98 F. 86; *People* v. *Friederich*, 67 Col. 69, 185 Pac. 657; *People* v. *Buffalo Cold Storage Co.*, 113 Misc. 479, 185 N. Y. Supp. 790; *Posadas* v. *National City Bank*, 296 U. S. 497, *supra*; *Ank Bay Salmon Canning Co.* v. *United States*, 300 Fed. 907, *supra*; 59 *Corpus Juris* 851.

The Solicitor General states in his brief:

> "By Act of March 1, 1902, the insular district courts were given jurisdiction of *quo warranto* proceedings against any corporation which 'does or omits any act' amounting 'to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law,' a jurisdiction broad enough in terms to extend to cases of violation of a local statute or the Joint Resolution."

If this means that he contends that the Supreme Court of Puerto Rico by Acts Nos. 33 and 47 is given a jurisdiction theretofore possessed by the District Courts, we do not agree. We believe the District Courts retain the jurisdiction of all proceedings conferred by the original *Quo Warranto* Act before amendments, which did not include proceedings based on violations of the Joint Resolution or the Organic Act. We do not agree that District Courts had jurisdiction of such proceedings based on the grounds

upon which the exclusive jurisdiction of the Supreme Court of Puerto Rico is predicated in Acts Nos. 33 and 47 because such grounds were provided as new grounds for *Quo Warranto*, nor that such was the legislative construction of the *Quo Warranto* Law as it stood before amendment. If a corporation could violate the provisions of the Joint Resolution prior to Acts Nos. 33 and 47, it follows that any proceeding to forfeit its charter or impose any penalty must necessarily have been instituted by Federal authorities and in a Federal court.

To save these statutes from invalidity the Court is asked to construe the statute that by its plain language refers to an Act of Congress as applying only to Puerto Rican statutory laws; to introduce words of limitation into both statutes. Such a construction of statutes this Court on other occasions has declined to make.

Trade Mark Cases, 100 U. S. 82;
Butts v. *Merchants and Miners Transportation Co.*, 230 U. S. 126;
Yu Cong Eng v. *Trinidad*, 271 U. S. 500;
Asiatic Petroleum Co. v. *Collector*, 297 U. S. 666;
Small Co. v. *American Sugar Refining Co.*, 267 U. S. 233, 239, 240.

See also,

Helvering v. *Wood*, decided by this Court February 26, 1940 (No. 384, October Term, 1939).

(b)

The Acts attempt to confer jurisdiction to impose penalties for violations of Federal laws upon Insular Courts and in so doing not only legislate upon matters not within the legislative domain of the Legislature of Puerto Rico, but also violate express provisions of Federal laws.

For violations of the Joint Resolution of Congress and of the Organic Act of Puerto Rico, Acts Nos. 33 and 47

provide penalties and confer jurisdiction upon the Supreme Court of Puerto Rico to impose them.

Paragraph 9 of Section 41 of Title 28, U. S. C. confers original jurisdiction of actions and proceedings to decree and enforce penalties and confiscations arising under any law of the United States upon courts of the United States. Section 371 of the same Title provides:

> "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several states:
>
> First:—
>
> Second:—Of all suits for penalties and forfeitures incurred under the laws of the United States."

The penalty here is created by an Act of Puerto Rico, but the law to which it attaches is a law of the United States. *If the Federal law disappeared, there would be nothing upon which these statutes could operate.*

Of all suits, prosecutions and proceedings specified in Section 256 of the Judicial Code (28 U. S. C., sec. 371) original jurisdiction is vested in district courts of the United States by Section 41 of Title 28 U. S. C.

Section 41 of the Organic Act of Puerto Rico confers upon the District Court of the United States for Puerto Rico jurisdiction of all cases cognizable in district courts of the United States.

Section 42 of the Organic Act of Puerto Rico provides:

> "The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the Courts of the several states shall govern in such matters and proceedings as between the District Court of the United States and the courts of Puerto Rico."

By a local act approved March 12, 1903, entitled "An Act establishing the Supreme Court of Puerto Rico as a court of appeals" (Appendix, p. 78) it was made solely a court of appeals and not of cassation. As the District Court of the United States for Puerto Rico is vested with the same original jurisdiction as that vested in district courts of the United States as to all suits, prosecutions and proceedings specified by Section 256 of the Judicial Code, jurisdiction of the same matters by any other court in Puerto Rico is necessarily excluded. The court will take judicial knowledge that the District Court of the United States for Puerto Rico has since its creation taken exclusive jurisdiction in Puerto Rico of all cases comprehended in Section 256 and that no Insular Court has taken jurisdiction of such cases.

Section 40 of the Organic Act provides:

> "* * * the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

The attempt, therefore, of the Petitioner by the instant statutes to vest jurisdiction in the Supreme Court of Puerto Rico to impose penalties for violations of a law of the United States not only violates Section 256 of the Judicial Code but likewise Section 40 of the Organic Act of Puerto Rico, in that it impairs the jurisdiction of the District Court of the United States for Puerto Rico.

Section 42 of the Organic Act of Puerto Rico above quoted answers the contention of counsel for Petitioner that Section 256 of the Judicial Code is not applicable because it was intended to apply only as between courts of the United States and courts of the several states.

The Supreme Court of Puerto Rico in a careful opinion in *People* v. *Torres*, 28 P. R. R. 783, held that Insular Courts have no jurisdiction of prosecutions instituted for violations of certain Organic Act provisions. The Solicitor General in his brief in support of the petition for *certiorari* agrees with Respondent that the *Shell* case holds that Puerto Rico could not confer jurisdiction on Insular Courts of proceedings to enforce the Sherman Anti-Trust Act. He said:

> "In *Puerto Rico* v. *The Shell Co.*, 302 U. S. 253, the Court held that the fact that the Sherman Anti-trust Act was applicable to Puerto Rico did not preclude adoption by the legislature of Puerto Rico and enforcement in the local courts of a local anti-trust act substantially similar to the Sherman Act. The Court was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Antitrust Act but only its local equivalent."

The Solicitor General now relies on a series of cases beginning with *Houston* v. *Moore*, 5 Wheaton 1, as authority for the proposition that the Insular Legislature and courts have power to enforce civil or prohibitory legislation of Congress. It is true that in *Houston* v. *Moore* the court sustained an act of Pennsylvania giving jurisdiction to its courts to enforce the Federal penalties for delinquency under a Federal militia law. But it should be noted that Mr. Justice Story read a vigorous dissent (in which one of the Justices concurred), the reasoning of which (cf. page 75) is persuasive. And Professor Warren's article in the 38th Harvard Law Review, page 545,—relied on by the Solicitor General—seems to indicate (p. 594) that Mr. Justice Story's views were probably the views of the court some fifteen or twenty years later and have continued to be the views of the court. And again Professor Warren at

page 597 states that he is of the opinion that there may be reason to support the jurisdiction of the state courts in such respects only if (1) Congress shall refrain from making the Federal court jurisdiction exclusive, and (2) if Congress shall signify its desire and intention that the state courts may exercise concurrent jurisdiction and (3) that the state courts are willing and allowed by their state legislation to exercise it. But, as shown above, the jurisdiction of the Federal courts in suits involving penalties and forfeitures under the laws of the United States is conferred exclusively on the courts of the United States (Section 371, Title 48 U. S. C. See also Sections 40, 41 and 42 of the Organic Act, *supra*).

(c)

Assuming that the Legislature of Puerto Rico had power to amend a Federal law, the attempted amendment of the Joint Resolution of Congress No. 23, approved May 1, 1900, and of Section 39 of the Organic Act of Puerto Rico, by these statutes, is ineffective for failure to comply with the provisions of Section 34 of the Organic Act of Puerto Rico. (See Point III, *infra*.)

(d)

The penalties created by Act No. 47 convert the Act into an *ex post facto* law in violation of Section 2 of the Organic Act of Puerto Rico.

At the time Respondent was incorporated and under the laws then existing the violation of the Joint Resolution of Congress of May 1, 1900 was not a ground upon which *Quo Warranto* could be instituted and forfeiture of the corporate franchise decreed in an Insular Court nor were penalties attached by Act No. 47 for violation of the Joint Resolution in existence. The consequence and the only consequence of the doing or omission of any act which

amounted to a surrender or forfeiture of its rights and privileges as the corporation "or the exercise of rights not conferred by law", which were the then existing grounds upon which the proceeding of *Quo Warranto* could be based, was ouster from the franchise and fine, or, in the discretion of the Court, a fine only. *Quo Warranto* was an action of a purely civil nature, as it was and is in most other jurisdictions in the United States. Upon judgment of ouster the corporation was dissolved and after payment of the debts the property was distributed among the stockholders. The effect and consequences of a *Quo Warranto* proceeding of this nature and the limitations upon the judgment had been repeatedly declared by the courts. The following states the accepted view of the nature and consequences of the modern remedy of *Quo Warranto*.

> "When we examine the first of these grounds, we find nothing in the books to support an idea that the abuse of a corporate franchise occasions a forfeiture of land or goods, rights or credits, or in fact, occasions any other forfeiture but the franchises themselves. The consequence of a breach of the implied condition on which their liberties were granted, was not that they should forfeit their property or possessions if they abused their franchises, but only that they should forfeit their franchises • • •.
>
> Consequently the judgment could not direct a seizure of corporate possessions, as a forfeiture for the violation of the charter."
>
> *State Bank* v. *State*, 1 Blackford (Ind.), 267, 281, 12 Am. Decisions, 234, 235.

The decisions of the Supreme Court of California are commonly followed in Puerto Rico because many of its codes and statutes derive from the laws of that state.

In *Havemeyer* v. *Superior Court*, 84 Cal. 327, 379, the Supreme Court of California said:

> "What is forfeited to the state, and all that is forfeited, is the charter,—the right to be a corporation; and this is presumed solely upon the ground that the condition upon which it was granted has been violated. * * * If this condition is broken, the charter which the state has given is taken back by the state; but the property which the corporation has acquired with its own means goes to those who have paid for it, and they have the right to deal with it just as others similarly situated may deal with their property."

Without any notice of intent to change the nature of the act amended, without any change in its title or definition, there was inserted in Section 2 of the *Quo Warranto* Act, by Act No. 47 the following provision:

> "When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf a confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."
>
> "In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 6 of the *Quo Warranto* Act was amended to read as follows:

> "Whenever in the opinion of the Court it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express

provisions thereof, the judgment entered shall decree the dissolution of the defendant entity if it be a domestic corporation, the prohibition to continue doing business in the country if a foreign corporation, the nullity of acts done and contracts made by the defendant corporation or entity, and in addition, the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico shall be decreed; and when a decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."*

The Petitioner, the People of Puerto Rico, is thus given an option which it may exercise within six months from the date on which the final judgment is rendered to institute in the same proceeding; the confiscation or alienation at public auction of the real property in Puerto Rico of any corporation against which the judgment of ouster runs. By the mandatory provisions of Section 6 as amended the judgment must also decree the nullity of all acts done and contracts made by the defendant corporation or entity and also the cancellation of entries or registrations made by the corporation in the public registries of Puerto Rico. These penalties must be imposed without regard to the gravity of the acts of the corporation defendant or the extent or importance of its infraction of any law. The corporation at the same time has all of its titles cancelled and loses all of its property and nothing remains for the stockholders. Among the contracts and rights thus to be annulled the greater part may be contracts perfectly valid

* We submit that this section was inaccurately translated from the Spanish in the official text (R., p. 240). We believe that the change we make in the above translation is correct. The Spanish text controls (Civil Code of Puerto Rico, Sec. 13, App., p. 78), as the bill was presented in Spanish.

and legal at the time they were made and in nowise connected with the particular offense for which the judgment of ouster is given, and inevitably the rights of other parties to the contracts would be affected. Until the option for the confiscation or alienation at public auction of the property of Respondent corporation is exercised, which possibly may not be until shortly before the expiration of six months from the date of the final judgment, it is impossible for the directors as liquidators of the corporation to dispose of its property, pay its creditors and distribute the balance among the stockholders, for certainly no one would purchase property prior to the expiration of the six months' period with the notice of *lis pendens* staring him in the face and the law advising him that such property may be confiscated or sold upon demand of the People of Puerto Rico. In the meantime, the properties cannot be operated, remain unproductive and diminish in value. As to the penalties created by the amendment of Section 6 of the *Quo Warranto* Law, it may be said that the Supreme Court of Puerto Rico in its judgment has not decreed any of these things. In view of the refusal of the Supreme Court of Puerto Rico to pass upon the validity of these penalties, its refusal to cancel notices of *lis pendens* and its silence as to what if anything may be done in the execution of judgment, Respondent was impelled to appeal from the judgment in this case. As it seemed to Respondent, the attitude of the representatives of the Petitioner was that it was unnecessary for it to decide whether the People of Puerto Rico would elect to alienate or confiscate real property until sometime after the judgment was entered or to request the imposition of the other penalties of nullity of contracts and cancellation of entries in the registries of property. The trial court declined to construe Act No. 47 in this respect.

Another ground upon which the apprehension of the Respondent as to the later imposition of penalties was based is a matter of record in the court below but is not found in the printed record of this case. It is, nevertheless, a fact and a record of which it is believed the court may take notice, as evidencing the intention of the Petitioner in this regard. Shortly after the entry of the judgment in this case Petitioner filed a petition for the appointment of a receiver upon which action has been postponed by reason of the supersedeas granted in connection with the appeal. *Havemeyer* v. *Superior Court*, 84 Cal. 327, *supra*, a decision which it is believed would have been followed in Puerto Rico prior to the enactment of Acts Nos. 33 and 47, holds that a receiver may not be appointed in a *Quo Warranto* proceeding, with a full examination and discussion of the law as to why such an appointment cannot be made. Such an application now must proceed upon the theory that the penalties provided create such a change in the law as to make the appointment of a receiver necessary. It is submitted that the penalties enacted convert the *Quo Warranto* Law of Puerto Rico into an *ex post facto* law. It is unimportant that the proceeding in which the penalties are imposed has a civil aspect.

Cooley, Constitutional Limitations, 8th Ed. 545;
United States v. *Hughes*, 8 Ben. 29, 26 Fed. Cas. No. 15416;
Burgess v. *Salmon*, 97 U. S. 381, 385;
United States v. *Hall*, 2 Wash. C. C. 366, 26 Fed. Cas. No. 15283;
French v. *Deane*, 24 L. R. A. 387, 19 Colo. 504;
Boyd v. *United States*, 116 U. S. 616, 634;
Atchinson, T. & S. F. Ry. Co. v. *United States*, 172 F. 194, (C. C. A. 7th, 1909).

The Petitioner says that it did not ask for the imposition of any of these penalties in the prayer of the Information. Of course, it was not necessary to do so since the duty to impose the penalties was mandatory. *Standard Oil v. Missouri*, 224 U. S. 270.

(e)

The language of Act No. 47 defining the grounds for *Quo Warranto* of which the Supreme Court of Puerto Rico is given jurisdiction is so vague and uncertain as to make the act inoperative and void.

The contention that the provisions of Section 1 of Act No. 47 offended against the rule of certainty and definiteness was stated in Respondent's brief in the Circuit Court of Appeals, and assumed particular importance when Petitioner proposed its new theory that the Information set out as a cause or ground of *Quo Warranto* jurisdiction the violation of a statute or statutes of Puerto Rico. We think that the language; "violation of the express provisions * * * of any of its statutes" is too indefinite to apprise the corporation of the grounds and causes for which its corporate charter may be forfeited and the severe penalties of the Act imposed.

Corporations must first search the laws of Puerto Rico for statutes that may be violated by corporations, which involves the construction of such statutes, at the hazard of losing both franchises and property if they err as to the applicability of such statutes or their proper construction, and this is from a practical standpoint an impossible task. Actually, they have no rule, guide or standard of conduct. Such a statute violates the due process clause of the Organic Act.

Smith v. Cahoon, 283 U. S. 553;

Connally v. *General Construction Co.*, 269 U. S. 385.

Liberty Highway Co. v. *Michigan Public Utilities Commission*, 294 Fed. 703 (D. C. Mich.);

Auers v. *Phillips Petroleum Co.*, 25 Fed. Supp. 458 (D. C. Tex.);

State v. *Northwest Poultry & Egg Co.*, 281 N. W. 753 (Minn.);

Denner v. *Weiss*, 122 S. W. (2d) 922 (Mo.);

American Stores Co. v. *Boardman*, 46 Dauph. Co. (Pa.) 334;

People v. *O'Gorman*, 274 N. Y. 284.

The statute devolves upon the courts the *legislative* duty of declaring what acts or omissions are "violations". In this respect we invite the attention of this Court to the reasoning of the opinion in:

State v. *Gaster*, 45 La. Ann. 636.

There is no statute or law of Puerto Rico defining violations of statutes or violations of express provisions of any of its statutes. By the construction of the words "violations of express provisions of the Organic Act of Puerto Rico", contended for by counsel for Petitioner and *amicus curiae*, as shown in the discussion of subdivision (a) of this point, by some sort of constructive alchemy, the word "express" is transmuted into "implied".

POINT II.

Petitioner will not be heard to urge here theories in support of the jurisdiction of the Supreme Court of Puerto Rico and in support of the validity of Acts Nos. 33 and 47 not presented to or litigated in the Supreme Court of Puerto Rico, nor to present here contentions not presented to that court.

Specifically, Petitioner should not be heard to urge here:

(1) That Acts Nos. 33 and 47 of the Puerto Rico Special Session of 1935 conferred jurisdiction on the Supreme Court of Puerto Rico to enforce Act No. 30 of the Puerto Rico Laws of 1911, as amended, or any other Puerto Rico statute;

(2) That there was litigated in the Supreme Court of Puerto Rico any issue relating to the enforcement of said Act No. 30 or any other local statute, or that the Supreme Court by its decree enforced or purported to enforce any such local statute;

(3) That Acts Nos. 33 and 47 incorporate by reference the provisions of Joint Resolution No. 23 or any provisions of the Organic Act;

(4) That the Insular Courts of Puerto Rico are courts of the United States.

The first two of the above enumerated contentions were advanced by Petitioner for the first time in the Circuit Court of Appeals and at that time Respondent objected to their consideration by the court. The third and fourth contentions appear to be urged for the first time in this Court. It is a familiar concept of appellate practice that parties should not be permitted to change the fundamental

theories of their case for the first time on appeal, nor to advance contentions on appeal that were not presented to the court below. The appellate court is entitled to know what was or would have been the views of the lower court upon the new theories or questions presented, and the opposing party as well is entitled to the opportunity of meeting in the lower court the situation created by those theories or contentions. We submit that the failure to present the contentions above mentioned in the Insular Court was not due—as suggested by Judge Peters in his dissent—to the infelicities of the pleading, but was due to the deliberate adoption by the Petitioner and the court of the theory upon which the case was pleaded, tried and decided.

The complaint (R., 2, *et seq.*) and the amended complaint (R., 44, *et seq.*) are identical except for the elimination in the amended complaint of the conclusion of law appearing in the preamble of the original complaint that the Respondent is no longer entitled to its franchise and privileges. We, therefore, discuss the amended complaint. In this short document, which occupies only three pages of the record (apart from exhibits) it appears in preliminary paragraphs (c) and (d) and in later paragraph 1 that the fundamental statutory provision sought to be enforced was Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900. In said paragraph 1 dealing with the public policy of Puerto Rico there are mentioned administrative statutes of Puerto Rico designed to administer and enforce Joint Resolution No. 23 and also statutes of the same character introduced and not passed by the local legislature; but nowhere is there any reference to the Puerto Rico law relating to corporations as embodied in Act No. 30 of the Laws of 1911 or any other local statute pertaining to corporations. Reference to the arti-

cles of incorporation of Respondent is made as "in conformity with the restrictions established in Section 3 of the Joint Resolution" (paragraph (c)). Again in paragraph (d) this restriction is linked to the Joint Resolution. We entertain no doubt that the pleader omitted reference to Puerto Rico substantive law not from inadvertence, *but because he conceived the theory of his case to be the enforcement of the Joint Resolution in the method provided in Acts Nos. 33 and 47.*

The challenge was met by Respondent in its demurrers to the amended complaint, and the Respondent addressed itself to this theory of the case set forth in the amended complaint (see particularly subparagraphs b, d, f, g and j of Section I and Section III of demurrers, R., 51 to 57). The demurrers were overruled on the authority of a previous decision of the Supreme Court of Puerto Rico in the *Fajardo Sugar Company* case (R., 81) and that opinion is published in the record, pp. 68 to 81. Said opinion proceeds on the theory that the Joint Resolution of Congress does not violate the rights of the defendant corporations in the *Fajardo* case nor deprive them of the equal protection of the laws, and holds that Acts Nos. 33 and 47 constitute valid remedial legislation for the enforcement of that Joint Resolution.

There was thus ample opportunity *in limine* for the People to present to the court any theory entertained by it that its case rested to any extent upon Act No. 30 of 1911 or any other local statute of substantive character. Furthermore had the proceeding been one to enforce Act No. 30, as well as the Joint Resolution, the court in deciding the demurrers would have had opportunity to require such cause of action to be separately stated. Section 104, subdivision 9, of the local Code of Civil Procedure provides that failure separately to state different causes of action may be raised by

demurrer as provided in subdivision 7 of Section 105; the latter section states as a ground of demurrer that the complaint is "ambiguous, unintelligible or uncertain" (Appendix, p. 80). It is fairly to be inferred that Respondent did not urge that such cause of action should be separately pleaded and the court did not decide that such cause of action should be separately pleaded because of the fact that nowhere in the amended complaint can reference to such cause of action be found.

It may also fairly be inferred that the Court, in overruling the fifth ground of demurrer, to wit, that several causes of action had been set out in the complaint (R., 58), found, upon an examination of the allegations of the complaint, that it set out only one cause of action; in other words, that the information did not set out a cause of action based upon violation of the Joint Resolution together with another cause of action based upon violation of statutes of Puerto Rico, or the corporate charter.

The testimony taken and evidence introduced (R., 99, *et seq.*) is directed only to the matters specified in the complaint, that is to say, matters relating to the Joint Resolution of Congress, to the compliance therewith by the corporation in its charter and to the public policy of the People of Puerto Rico as allegedly shown by numerous documents introduced in evidence (R., 130, *et seq.*). Those documents do not deal with the new arguments and theories advanced by Petitioner on appeal.

At the close of the People's case (R., 121) an elaborate motion to dismiss was filed. Again, this motion was addressed to the theory upon which the complaint was drawn and the case was tried. Upon consideration the court rendered its written opinion (R., 285 to 304). This carefully documented opinion adopts the theory of the complaint, and

nowhere purports to express an opinion upon local substantive law as contained in Act No. 30 or otherwise. The decree also follows the complaint and contains the following provisions (R., 305):

> "1. It is adjudged and decreed that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres.
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> 2. The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation.
>
> 3. The defendant corporation is adjudged to pay the costs and disbursements of this proceeding, including the sum of two thousand dollars ($2,000) as attorney's fees.
>
> 4. The defendant corporation is sentenced to pay a fine in the sum of $3,000."

We have examined with care briefs filed by counsel at various stages of this litigation prior to the entry of decree herein by the Supreme Court of Puerto Rico and we have found nothing therein advancing the theories or contentions which we have enumerated above page 31.

Then as frequently happens, it must have appeared to Petitioner when the case came before the Circuit Court of

Appeals that Petitioner would have difficulty in sustaining the judgment rendered upon the theory adopted by the parties in the court below; and as may have been natural under the circumstances efforts were made to find a way in which the judgment could be sustained. It must have appeared to Petitioner that the *Shell* case, 302 U. S. 253, relied on by the court below was but a weak prop for the judgment below to lean upon and, indeed, was effective authority for reversal thereof, for as the Solicitor General has conceded in his brief as *amicus curiae* in support of the petition for certiorari, this Court in the *Shell* case "was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Anti-Trust Act but only its local equivalent. See 302 U. S. at 271". We assume that a similar concession appears in the brief now before this Court of the *amicus curiae*, and the same concession is implicit in the whole brief of Petitioner. (It is true that they seek to distinguish the case on the ground that the Sherman Anti-Trust Act differs in character from the Joint Resolution.) What more natural than to seek for a local substantive law as a prop to lean upon in urging the affirmance of the judgment of the Insular Court. This, we may reasonably suppose, is the history of the injection into the case of Act No. 30 of 1911 as the basic support for the instant proceeding.

Respondent protested at the consideration of such a point by the Circuit Court of Appeals, stating in its reply brief before that court (p. 3):

> "This contention of counsel for appellee is obviously in the nature of an afterthought. No such contention was made in the lower court. The theory of counsel for appellee in the lower court is stated in the first paragraph of their brief here as follows:

> 'This case presents the question of the practical enforceability by proceedings in *quo warranto* in the Supreme Court of Puerto Rico, of the provisions of Section 3 of Joint Resolution No. 23 of the Congress, approved May 1, 1900 (31 Stat. 716; 48 U. S. Code 752), limiting to 500 acres the amount of land that may be held by a corporation engaged in agriculture in Puerto Rico, and of the validity of the statutes of Puerto Rico enacted with a view "to provide the procedural means for the enforcement of the land tenure restrictions" '".

The new contention (not accepted by the Circuit Court of Appeals) is repeated and argued at length by Petitioner (Br., pp. 41, *et seq.*) and by the *amicus curiae* both in his brief in support of the petition for certiorari (pp. 11, 12) and in his brief now before this Court.

However, it would seem that Petitioner felt the need of an anchor to windward (to vary the metaphor) in case this Court should not consider that Act No. 30 of 1911 is available to Petitioner in support of the judgment. Petitioner seeks to supply another local substantive law by advancing another new argument, to wit: that the Joint Resolution and the Organic Act are "adopted by reference" in Acts Nos. 33 and 47 (and also in Act No. 30 of 1911) and thereby became a part of the local substantive law (Petitioner's br., pp. 13, 29-32). Quite apart from Petitioner's failure to distinguish between mere "reference" and "incorporation by reference" (Point IV this brief), this novel contention should not be considered by this Court. A similar attempt to avoid the dilemma presented by the *Shell* case is found in a contention now made by Petitioner that the Insular Courts are courts of the United States and as such are appropriate tribunals to enforce the prohibitions of the Organic Act (Pet. br., p. 25).

It is obvious that these new theories and contentions are afterthoughts in a very literal sense, and we submit that this Court views with disfavor and is reluctant to consider theories and contentions injected into the case after it reaches the appellate courts. The importance of enforcing this rule of appellate procedure in the instant case is pointed very sharply by the fact that in order to consider Petitioner's argument regarding local law it would be necessary for this Court to construe the words "or of any of its statutes" in Act No. 47, and in order to sustain Petitioner's contentions it is necessary to construe those words as meaning any of the statutes of Puerto Rico. We call attention to the fact that the statute was enacted in the Spanish language, that the proceedings in the Insular Court are conducted in the Spanish language and that such court is the most appropriate court available to express an opinion in the first instance as to the meaning of the words used in this statute. No opportunity was given to it to construe the statute in this sense, and we are without benefit here of knowledge as to its views on the question. As stated in *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 498, "his failure earlier to present the question leaves this Court without the assistance of decision below." It is also indicated in the *Tex-Penn Oil Co.* case that the opposing party is himself deprived of the opportunity to defend the action according to the theory urged on appeal and to know before final decree below what contentions he is to meet. As stated by the Court in that case (p. 498):

> "The taxpayers were entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiency."

In a footnote we give a list of illustrative decisions by this and other courts enforcing this wholesome rule of appellate procedure.*

In *Helvering* v. *Wood*, decided by this Court on February 26, 1940 (No. 384, October Term, 1939), the appellant was not permitted "to add here for the first time another string to his bow"; and the Court pointed out that to permit appellant to do this would both deprive this Court of the assistance of decision below, and also permit a shift to ground which the taxpayer had every reason to believe was abandoned in the earlier stages of the litigation.

So strongly entrenched is this rule that it has been held by this Court that in a case where the Circuit Court of Appeals gave consideration to a new theory on an issue "not pleaded, tried, argued or otherwise referred to" in the proceedings below, even though opposing counsel did not object to consideration by the Circuit Court of Appeals of the new theory, nevertheless, if the new theory be accepted, opportunity should be given to the opposing party to meet the

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* See *Helvering* v. *Minnesota Tea Co.*, 296 U. S. 378, 380;
Burnet v. *Commonwealth Improvement Co.*, 287 U. S. 415, 418, cases involving income taxes;
Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 435, a railroad rate case;
Roura v. *Government of the Philippine Islands*, 218 U. S. 386, 400, involving the registration of land titles;
San Juan Light & Transit Co. v. *Requena*, 224 U. S. 89, 97, involving a negligence action against a utility; and the following miscellaneous decisions:
Peck v. *Heurich*, 167 U. S. 624;
Wright v. *Wright*, 226 N. Y. 578;
Brown v. *Manufacturers Trust Co.*, 278 N. Y. 317;
Canaday Cooler Co., Inc. v. *Staten Island S. Co.*, 234 N. Y. App. Div. 451;
Pasquale v. *Clyde Piece Dye Works, Inc.*, 120 N. J. L. 557;
Palmer v. *Edgerly*, 87 N. H. 391, 181 Atl. 125;
Olsen v. *Shephard*, 165 Minn. 433, 437-438;
Kellner v. *Schmidt*, 328 Ill. 426, 430;
Vilas v. *Seith*, 108 Vt. 18, 183 Atl. 854.

new situation at a new hearing before the trial court (*Helvering* v. *Gowran*, 302 U. S. 238, 245, 247). Such was the practice adopted by the Circuit Court of Appeals for the First Circuit in the case of *Woodward* v. *Boston Lasting Mach. Co.*, 63 Fed. 609, which received the sanction of this Court in the *Gowran* case. But as pointed out above, the Circuit Court of Appeals in the instant case did not accept the new theories proffered by Petitioner, nor did their proffer before the Circuit Court go unchallenged by Respondent.

We, therefore, submit that this Court in its consideration of the correctness of the decision below confine itself to the theory of the case on which it was "pleaded, tried, argued" and decided *in the Insular Court*, and not upon new theories and new contentions presented by Petitioner on appeal in an endeavor to bolster its decision.

Notwithstanding the foregoing, we show below that even were the new points raised by Petitioner available to it at this stage of the litigation they would not result in reversal.

POINT III.

Acts No. 33 and No. 47 of 1935, must be held invalid because they "amend", or "extend", or "confer" provisions of Federal or Puerto Rican laws without complying with Section 34 of the Puerto Rican Organic Act, which provides: "No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be reenacted and published at length."

Constitutional provisions like those of Section 34 are widely recognized as important restrictions upon legisla-

tures. They have been inserted in whole or in part in some thirty-nine state constitutions. In ten states the provisions are almost the same as those quoted above. In other constitutions, particularly those first adopted, the provision refers to revision or amendment without referring to extension or conferring. But the purpose and public policy of all are alike and they are all important.

A list of state constitutions embodying such provisions is presented below, in a footnote.

The purpose of such provisions and the "mischief designed to be remedied" thereby was well stated in 1865 by

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The following five States have constitutional provisions identical or closely similar to that quoted from Section 34 of the Puerto Rican Organic Act: Alabama (Const., §45); Arkansas (Const., Art. V, §23); Colorado (Const., Art. V, §24); Pennsylvania (Const., Art. III, §6); Oklahoma (Const., Art. V, §57). In the following five States the word "revised" appears in place of "revived": Kentucky (Const., §51); Montana (Const., Art. V, §25); three of these, New Mexico (Const., Art. IV, §15), North Dakota (Const., §64), and Wyoming (Const., Art. III, §26), omit the word "conferred". The following twenty States have closely similar provisions, using only the words "revised and amended", "revised, altered and amended", or "revived and amended", as follows: "Revised and amended": Arizona (Const., Art. II, §14); California (Const., Art. IV, §24); Florida (Const., Art. III, §16); Idaho (Const., Art. III, §18); Indiana (Const., Art. IV, §21); Nevada (Const., Art. IV, §17); Oregon (Const., Art. IV, §22); Utah (Const., Art. VI, §23); Washington (Const., Art. II, §37). "Revised, altered and amended": Michigan (Const., Art. V, §21). "Revived and amended": Illinois (Const., Art. IV, §13); Kansas (Const., Art. II, §16); Louisiana (Const., Art. III, §17); Maryland (Const., Art. III, §29); Mississippi (Const., §61); New Jersey (Const., Art. IV, s. VII, §4); Ohio (Const., Art. II, §16); Texas (Const., Art. 3, §36); Virginia (Const., §52); West Virginia (Const., Art. 6, §30). Georgia (Const., Art. III, §VII, Par. 17) has a provision using the words "amended or repealed". Analogous provisions are found in Missouri (Const., Art. IV, §§33, 34); Nebraska (Const., Art. III, §14); Tennessee (Const., Art. II, §17); New York (Const., Art. III, §16). Certain other states, having no such provision, have nevertheless a provision requiring the subject of an act to be expressed in its title closely similar to that in Section 34 of the Puerto Rican Organic Act (Appendix, p. 73): Delaware (Const., Art. II, §16); Minnesota (Const., Art. IV, §27); South Carolina (Const., Art. III, §17); South Dakota (Const., Art. III, §21).

the Michigan court in *People* v. *Mahaney* 13 Mich. 481, as follows; this statement has been widely quoted and approved:

> "The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the Constitution wisely prohibited such legislation." *People* v. *Mahaney*, 13 Mich. 481.

The important case of *State* v. *Armstrong*, 31 N. Mex. 220, 243 Pac. 333 (1924), the case which most exhaustively and clearly treats such provisions, states the purpose of such provisions as follows at pages 272 and 273:

> "* * * As said in substance in many of the cases, **the purpose of such limitations as this** (as well as of that, common to most of the states, that a statute shall contain but one subject or object, which shall be expressed in its title), **is that statutes shall carry on their face sufficient that, by an inspection, their import may be known. This purpose is everywhere admitted to be salutary. It was to prevent evils broadly referred to as 'blind legislation', manifested in a number of ways.** Amendments were made by merely striking out or inserting a phrase or word

Statutes repealed, and perhaps for that reason omitted from compilations, were revived by reference to title only. **Existing laws or provisions of laws of the same or other jurisdiction were adopted by mere reference. All of these legislative practices frustrated the broad purpose of these constitutional limitations and constituted 'blind legislation'.** In developing the remedy, restriction was first placed upon reviving or amending, or revising or amending by reference to title only. This provision, as correctly construed by the courts, cured only some of the evils of 'blind legislation'. It did not touch 'reference statutes', for such did not amend, revise or revive. The existing law was left to operate just as it did before. Its scope was merely enlarged in one way or another. It requires no argument to demonstrate that courts have no power to restrict legislative practice, even by consulting the mischief intended to be avoided, by declaring an act void when the language of the Constitution does not make it so. **To complete the remedy, the restriction upon extensions was inserted.** * * *

"* * * **The courts are not left to inquire whether the Legislature or the people at large, or the party litigating, have been misled in a particular case. They are given a general rule, the application of which is presumed best to meet all cases.** * * *"
(Emphasis supplied.)

The court also gives the history and development of such constitutional provisions since *People* v. *Mahaney*, 13 Mich. 481, in 1865—at page 258.

Similar statements by the New York courts are relevant for, although not using the word "extend", the New York constitutional provision in effect forbids (Article III, Section 16, formerly Section 17) extending without reenacting.

In *People ex rel. Commissioners* v. *Banks*, 67 N. Y. 568, 575-576, the court said:

> "The evil in view in adopting this provision of the Constitution was the incorporating into acts of the legislature by reference to other statutes, of clauses and provisions of which the legislators might be ignorant, and which affecting public or private interests in a manner and to an extent not disclosed upon the face of the act, a bill might become a law, which would not receive the sanction of the legislature if fully understood."

The wisdom of such provisions was recognized by this court in *Posadas* v. *National City Bank*, 296 U. S. 497, 505-506, where Mr. Justice Sutherland says with regard to a law intended to repeal old Section 25 of the Federal Reserve Act:

> "The amendment is made in well approved form—a form which indeed many of the states compel by constitutional provision—namely by repeating the language of the original section with the additions to which we have heretofore called attention. Unless the contrary plainly appear, the employment of such form of amendment is simply to serve the causes of convenience and certainty. That is to say by carrying the full text forward the task of searching out and bringing together the various fragments which go to make up the completed whole after specific eliminations or additions by amendment is rendered unnecessary and possible doubt as to the precise terms of the law as amended is avoided."

Such constitutional provisions have been widely enforced by the courts, which have invalidated many statutes for disregard of these provisions.

In a footnote[1] we give a partial list of court decisions in which statutes have been so invalidated, including many cases where the invalidation was for "extending" or "conferring". We mention below a few statutes which have been invalidated because they "extend" or "confer" provisions in earlier statutes without reenactment.

An Oklahoma act providing for the enforcement of void or defective tax liens, (which the dissenting opinion thought was "highly remedial", p. 249) was held unconstitutional for a defective title and for attempting "to extend the provisions of law for foreclosure of mortgages * * * to the foreclosure of the lien of the holder of a tax sale certificate" and "to confer" them on holders of tax sale certificates. The invalidated act provided that " 'all the proceedings in such action, so far as applicable * * * shall be the same as now provided by law, for the foreclosure of mortgages * * *.' " *Casner* v. *Meriwether*, 4 Pac. (2d) 19, 152 Okl. 246, 249 (1931).

An act of the general assembly of Arkansas providing that "the law now in force governing in cases where coun-

[1] *Savage* v. *Wallace*, 165 Ala. 572, 575; 51 So. 605, 606; *Opinion of Justices*, 237 Ala. 377, 379; 186 So. 731, 733; *Farris* v. *Wright*, 158 Ark. 519, 520; 250 S. W. 889, 890; *Nelson* v. *Hoffman*, 314 Ill. 616, 619; 145 N. E. 688; *Kelley* v. *St. Louis Smelting Co.*, 307 Ill. 367, 370; 138 N. E. 618, 619; *People* v. *Jarecki*, 363 Ill. 180, 186; 1 N. E. (2nd) 855, 858; *School District No. 45* v. *Board of County Commissioners*, 141 Kans. 108, 110; 40 Pac. (2nd) 334, 335; *Hickman, Mayor* v. *Kimbley*, 161 Ky. 552, 654; 171 S. W. 176; *Commonwealth* v. *Moore*, 187 Ky. 494; 219 S. W. 786; *Holmes* v. *State*, 146 Miss. 351, 359; 111 So. 860, 862; *Northern Pacific Co.* v. *Dunham*, 108 Mont. 338, 341; 90 Pac. (2nd) 506, 508; *Tukey* v. *Douglas Co.*, 129 Neb. 353; 261 N. W. 833, 835; *Commonwealth* v. *Sweeney*, 5 D. & C. (Pa.) 80; *Henderson* v. *City of Galveston*, 102 Tex. 163, 169; 114 S. W. 108, 111; *Copeland* v. *Pirie*, 26 Wash. 481, 482; 67 Pac. 227.

ties are authorized to call in their floating indebtedness shall apply and govern in proceedings had by counties * * *." was held void because it "undertakes * * * to extend the positive provisions of law" and was unconstitutional. *Watkins* v. *Eureka Springs*, 49 Ark. 131, 133, 134, 4 S. W. 384 (1887).

A Colorado statute relating to juvenile delinquency was held unconstitutional in *People* v. *Friederich*, 67 Colo. 69, 70, 74, 185 Pac. 657 (1919), for amending one prior law and extending and conferring the provisions of another. The essential provision of the new statute of 1911 was that: "* * * any law of this state defining delinquency or concerning contributory delinquency shall * * * be held to include all girls under 18" (p. 70). The Court said:

> "The Act shows on its face that it attempts to extend the provisions of Section 586 and Section 589, R. S. 1908, by merely alluding to them as acts 'defining delinquency or concerning contributory delinquency'. It is manifest that no person, by reading the act of 1911 alone, could form any idea of its effect or meaning" (p. 74).

A mechanics lien law of Pennsylvania was held unconstitutional in *Titusville Iron Works* v. *Keystone Oil Co.*, 122 Pa. 627 (1888). The court said:

> "Now, the constitution provides in section 6, of Article III, that 'No law shall be revived, amended, extended, or conferred by a reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length'; while the act of 1887 extends and confers the benefits of the acts of 1836 and 1845 to a large class of claimants, without the re-enactment of a single one of the provisions of the acts so extended, and by a reference to their titles only. It would be

difficult to imagine a plainer violation of the constitutional provision."

An important section of the New York Education Law was held void in *Becker* v. *Eisner*, 277 N. Y. 143 (1938). Section 16 of Article III of the Constitution (formerly Section 17), although not using the word "extend", provides in effect that no existing law shall be extended to a new act "except by inserting it in such act". The Court said:

> "This reference to *'all laws'* and to *all* which hereafter may apply to the board of education, not the higher board, is entirely too vague, and to permit it to pass as proper legislation would in effect nullify the Constitution. Such decisions as *People ex rel. Board of Commissioners of Washington Park* v. *Banks* (67 N. Y. 568); *People ex rel. New York Electric Lines Co.* v. *Squire* (107 N. Y. 593); *Darweger* v. *Staats* (267 N. Y. 290, 308), have explained the purpose of section 17 of article III of the Constitution and the evils and confusion it was sought to prevent. All those evils now crowd forward in this legislative enactment. For this case the petitioner seeks only reference to article 33-A of the Education Law, but the act is not so limited—all laws—what laws? Nobody knows and nobody can tell with any certainty, although we may guess that none will turn up except article 33-A as applicable to the Board of Education. There is the provision "all laws applicable"—too vague to be good. * * * Such language is deceptive and illustrates the danger which flows from legislation by reference" (p. 150).

State ex rel. Gammons v. *Shafer*, 63 N. D. 128, 246 N. W. 874 (1933). This involved the constitutionality of an initiated bill or measure purporting to reduce salaries of Government officials and employees. Neither the title nor

the act referred to any specific statute. The court held the salary section unconstitutional and invalid as contrary to Section 64 of the State Constitution, which is the same as the Puerto Rican provision in Section 34, except that it does not speak of "conferring".

People v. Greer College, 302 Ill. 538, held an act invalid which gave individuals the right to maintain suit to procure the dissolution of the corporate donees of charitable gifts for diversion of the gift, and imposing the severe penalty of forfeiture of property. This was found to be an amendment of the original act, under which such diversion, or change in the purposes of the gifts, was punishable before the enactment of the later statute only by a suit of *Quo Warranto* for forfeiture of the charter or franchise, brought at the instance of the Attorney General.

Pittsburgh's Petition for Board of Viewers, 138 Pa. 401, 429 (1891), held that an amended charter to the city of Pittsburgh was invalid because it attempted "to extend to * * * new officers" created by the act "all the acts * * * relating to the duties of abolished offices".

The court said:

> "These sections do undertake to confer powers, previously exercised by a number of officers whose offices are discontinued, upon the heads of departments created by the act. They undertake to extend to these new officers all the acts of assembly relating to the duties and powers of all these unnamed and abolished offices, without even a reference to their dates, their titles, or their subject matter. **To understand what was, and what was not within their control, it would be necessary to digest all the local laws relating to all the officers whose functions are thus gathered up and dropped into the hands of the 'heads of departments'. This mode of defining the powers of a newly created officer is in violation**

> **of the letter and the spirit of the constitutional provision, and cannot be sustained;** *Titusville Iron W.* v. *Oil Co.,* 122 Pa. 627; *Donohugh* v. *Roberts,* 11 W. N. 186."

Other excellent cases regarding such constitutional provisions, in addition to the above, are the following:

Sovereign v. *State,* 7 Neb. 409 (1878), saying that such blind legislation "if permitted, would introduce endless confusion and uncertainty into the law. To avoid the possibility of such legislation, the people, by this constitutional provision, have taken from the Legislature the power to so amend a statute".

Watkins v. *Eureka Springs;* 49 Ark. 131, 134, 135, 4 S. W. 384 (1886).

In re Buelow, 98 Fed. 86 (D. C. Wash.) (1889).

State v. *Beddo,* 22 Utah 432 (1900), containing an excellent statement of the purpose, character and public policy of such provisions.

Martin v. *Gilliam County,* 89 Ore. 394, 173 Pac. 938 (1918).

DeMotte v. *DeMotte,* 364 Ill. 421 (1936), where the court said, in holding invalid, an amendment without reenactment:

> "* * * The other matters already referred to make the reading of both acts necessary to a determination as to what the law is on the subject of divorce. There is an intermingling of the provisions to the extent condemned and prohibited by the constitution and the amendatory statute does amend the divorce act. * * *"

59 Corpus Juris 863 sums up the situation fairly. After saying that in a large number of states the constitutions provide "that no statute shall be amended by reference to

its title only, but the statute amended or as amended shall be set forth and published at length", and that in New York the constitution declares "that no act shall be passed which shall provide that any existing law or any part thereof shall be made or deemed a part of the act or which shall enact that any existing law or any part thereof shall be applicable, except by inserting it in such act", and that in New Jersey the constitution requires both provisions, *Corpus Juris* says:

> *"These provisions have been uniformly held to be mandatory and unless they are substantially complied with the amendatory act is void and ineffective"*, citing very many cases (Emphasis supplied).

Acts No. 33 and No. 47 clearly "amend" or "extend"—or "confer"—the provisions of the Joint Resolution without reenactment and are therefore void.

The provision inserted by Congress in the present Organic Act for Puerto Rico (Appendix, p. 73) is:

> "No law shall be revived or amended or the provisions thereof extended or conferred by reference to its title only but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length."

What do the words "amend" and "extend" as used in this provision mean?

The meaning of "amend" is comparatively clear, generally speaking, although sometimes it is construed strictly and sometimes broadly.

The word "extend" forms an important part of Section 34 as applied to this case, for even though it may be argued that the loose language of Acts No. 33 and No. 47

does not in any strict sense "amend" the Joint Resolution, it certainly "extends" that Resolution.

One of the definitions in the Century Dictionary is helpful:

> "4. To make more comprehensive; enlarge the scope of; give a wider range to; * * *.

The cases mentioned above at pages 41 to 49, where the courts have invalidated statutes because they "extend" other statutes, help us to define the word, as they show how courts use and apply the word in this connection.

Without attempting to give a complete definition of the word for the purpose of such constitutional provisions, we submit that an older statute is certainly "extended" by a new statute (1) if the new statute enlarges the scope of the older statute or gives it a wider range or enlarges it in any sense; or (2) makes it more comprehensive; or (3) makes it applicable to new persons or situations; or (4) changes the effect or means or method of enforcement. An "extension" may be either (1) by incorporating into the new statute provisions of the old (and thus in effect embodying the old statute or some parts of it in the new statute), or (2) by referring to the older statute (without incorporating it) in such a way as to introduce into the new statute definitions and concepts of the older statute and thus "extending" the older statute by making the new statute carry on the purposes of the older statute.

It is interesting that at page 34 of his brief, Petitioner's counsel states that Acts No. 33 and No. 47 "amounted, in effect, to an adoption by reference of those provisions of the Federal statutes as part of the local statutory law", referring to Section 752 of Title 48, U. S. C. and the second paragraph of Section 39 of the Organic Act of 1917, both of which include Section 3 of the Joint Resolution. Obvi-

ously, if the two Acts named did adopt these Federal provisions, they either "amended" or "extended" the provisions of the Federal statute, without re-enacting "at length", as required by Section 34, "so much thereof as is revived, amended, extended or conferred"—with the result that the two Acts must be so far held invalid.

The rule against "extension" is not limited to prior laws of the same jurisdiction.

The mischief and purpose of this remedial provision are clearer and stronger in case of "extension" of a foreign law than of a law of the same jurisdiction, for the resulting confusion and blindness are greater when a foreign law is "extended".

We find no authority for any such limitation of the rule. On the other hand, in the well-considered case of *State* v. *Armstrong*, 31 N. Mex. 220 (*supra*, pp. 42-43), the New Mexican statute was held invalid because it "extended" the provisions of the Prohibition Amendment and of the National Prohibition Act.

The important case of *Darweger* v. *Staats*, 267 N. Y. 290, 308, *et seq.*, is persuasive on this point. It held invalid as contrary to the New York constitutional provision against extension, a statute which provided that violation of any N. R. A. Code approved by the President and in effect pursuant to Title 1 of the National Industrial Recovery Act (48 U. S. Stats. 195) would constitute the New York standard of fair competition for intrastate transactions and made a violation thereof a misdemeanor. The Court says at page 309:

> "The Codes above referred to, when once approved, are designed to have the effect of the law; they are made law by the act of Congress so far as they affect interstate commerce, and now they are

proposed to be made law by incorporating them bodily into our statute by reference. It is too narrow a construction of this wise constitutional provision to say that it only applies to State laws and not to the Codes, because they are not laws in the strict sense of the word. The Codes became laws with heavy sanctions for an infraction. Their embodiment into chapter 781 of the Laws of 1933 by reference was unconstitutional. (*Opinion of the Justices*, 239 Mass. 606; *State* v. *Vino Medical Co.*, 121 Me. 438.) (See, also, *People ex rel. New York Electric Lines Co.* v. *Squire*, 107 N. Y. 593, p. 602; *Matter of Watkinson* v. *Hotel Pennsylvania*, 195 App. Div. 624, affd., 231 N. Y. 562.)"

Section 3 of the Joint Resolution of May 1, 1900 is certainly "extended" by Acts No. 33 and No. 47, without reenactment.

The relative part of the Joint Resolution is that: "every corporation hereafter authorized to engage in agriculture shall, by its charter, be restricted to the ownership and control of not to exceed 500 acres of land."

Act No. 33 says:

"Section 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all quo warranto proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding in the nature of quo warranto."

It is clear that Act No. 33 "extended" the Joint Resolution. For until that Act was passed a corporation authorized to engage in agriculture and holding more than 500

acres of land was not subject to any *Quo Warranto* proceeding in any court for "violation" of the Joint Resolution as it was and is worded. Act No. 33 (if valid) provided that the violation of Section 752, including the 500 acre provision, "shall constitute sufficient cause to institute a proceeding in the nature of *Quo Warranto* before the Supreme Court" and, thus, attempted to provide that a suit could be brought in the Supreme Court under the *Quo Warranto* Law against a corporation violating the 500 acre provision of Section 752, which might possibly result in ouster and fine. Assuming that this was the intended effect of Act No. 33, that Act would make the offending corporation subject to a suit and penalties for "violation" of the 500 acre provision to which it was previously not subject and on an interpretation of the Joint Resolution (as being a prohibition on corporations instead of a mandate on Puerto Rico as before) which the words of the Resolution did not justify. Act No. 33 was thus either an amendment of a Federal law (which was obviously impossible) or an "extension" thereof as enlarging its scope and applicability and effect. Act No. 33 also "conferred" jurisdiction upon the Supreme Court.

Act No. 33 thus "extended" the Joint Resolution and "conferred" jurisdiction, without re-enacting the provisions extended or conferred, as required by Section 34 of the Organic Act, and it was consequently invalid.

Act No. 47 even more dramatically "extends" the Organic Act of Puerto Rico, or the Joint Resolution. For before the passage of Act No. 47, the offending agricultural corporation could, at most, under the Joint Resolution as "extended" by Act No. 33 (if the extension could be held valid) be subjected to a *Quo Warranto* suit in which ouster and fine could be ordered at the discretion of the Supreme

Court. But by Act No. 47 (if valid) the Organic Act, including the Joint Resolution, was further "amended" or "extended" so that if the offending corporation (by itself or through any other subsidiary or affiliated entity or agent) "exercises rights, performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico," including the Joint Resolution, it would face new and terrible penalties. For if "in the opinion of the (Supreme) Court it is satisfactorily established" that its excess land holding was "in violation of the express provisions of the Organic Act of Puerto Rico", the Supreme Court would be bound by the **mandatory** provision of Act No. 47 to decree its dissolution and to "decree the cancellation of every entry or registration made by said corporation in the public registries of Puerto Rico"! The Organic Act (or at least the Joint Resolution) was thus extended by Act No. 47 without reenactment of any of the provisions extended, contrary to the prohibition of Section 34. For in order to determine whether its offending was "in violation of the express provisions of the Organic Act of Puerto Rico", the Organic Act (or at least the Joint Resolution) must be read, and read with Act No. 47, for not only the jurisdiction of the Supreme Court, but also the penalties to be imposed, depend upon a determination by the Supreme Court as to whether the express provisions of the Organic Act were actually violated by the offending corporation.

But this is not all.

For opposing counsel argued for the **first time** in the Court below (after the case was argued, tried and decided in Puerto Rico on the theory, apparently approved by all parties, that the only basis for the jurisdiction of the Supreme Court was violation of the Federal Act, and without mention of Puerto Rican statutes), and now argues,

that in Act No. 47 the words "or of any of its statutes" mean "or of any of the statutes of Puerto Rico" and that consequently the Supreme Court has, under Act No. 47, "exclusive original jurisdiction", and power to enforce these severe penalties, either for "violation of the express provisions of the Organic Act of Puerto Rico" or for violation of the express provisions "of any of the statutes of Puerto Rico."

What Puerto Rican statutes did the Legislature mean? No one can tell.

If it should be held that the meaning of the words is "or of any of the statutes of Puerto Rico" Act No. 47 clearly "amends" or "extends" the provisions of many existing Puerto Rican statutes without reenacting the provisions "amended" or "extended" as required by Section 34 of the Organic Act and for that reason Act No. 47 must be held void.

A partial list of Puerto Rican statutes so "amended" or "extended" is set forth below.* And at the risk of being tedious, we may illustrate this effect of Act No. 47 by a few examples referring to different statutes.

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* "An Act to Regulate the Operation of Motor Vehicles in Porto Rico, and for other purposes", Act No. 75, Laws of 1916, pp. 140-150; Sec. 13, and (as Amended by Act No. 93, Laws of 1925, pp. 756-762) Secs. 9 and 18; "An Act to Regulate the employment of Minors . . . ", Act No. 75, Laws of 1921, pp. 678-700, Sec. 2, and (as amended by Act No. 64, Laws of 1925, pp. 338-342) Sec. 3, and (as amended by Act No. 75, Laws of 1931, pp. 462-466) Sec. 19; Penal Code of Porto Rico, Chap. X, Sec. 483; Civil Code of Porto Rico, 1930 Ed., pp. 343-345, Secs. 1649, 1652; "An Act to establish a law of private corporations", Act No. 30, Laws of 1911, pp. 87-115, as amended by Act No. 48, Laws of 1934, pp. 384-388, Secs. 5(a) and 5(b); "An Act to prohibit the payment of laborers' wages in anything other than lawful money . . ." Act of March 12, 1908, Laws of 1908, pp. 171, 172, Sec. 2, and (as amended by Act No. 61, Laws of 1931, pp. 408-410) Sec. 1; "An Act to regulate labor contracts; . . ." Act No. 17, Laws of 1931, pp. 194-196, Secs. 1 and 2.

Let us take the case of a Puerto Rican statute that would be "extended" by Act No. 47—Section 1649 of the Puerto Rican Civil Code (Appendix, p. 79) establishing 12% as the maximum interest rate in Puerto Rico. Assume that Corporation A is a loan company or perhaps a sugar central corporation which, upon a loan, contracts for and receives greater interest. **Until August 7, 1935**, when Act No. 47 was approved, Corporation A would know that under Sections 1652 and 1653 of the Civil Code (Appendix, p. 79) the usurious contract would be void and unenforceable and that the debtor could recover back the excess paid above the legal interest. But **after** August 7, 1935, Corporation A would also be subject to a proceeding under Act No. 47 instituted by the Attorney General before the Supreme Court for exercising rights, performing acts or making contracts "in violation of the express provisions" of the usury sections, being one of the statutes of Puerto Rico vaguely referred to by Act No. 47; and the Corporation would, in that proceeding, face terrible penalties. For if the Supreme Court should consider that the usurious transaction, being a violation of the express provisions of a statute of Puerto Rico, was "satisfactorily established", it would be **compelled** by Act No. 47 to decree the dissolution of the Corporation and also "decree the cancellation of every entry or registration" made by it in the public registries of Puerto Rico—thus in effect depriving the corporation of all its real property! But worse than that, under the Spanish version of Act No. 47, which controls the English version, and is badly mistranslated by the English version, the Court would also be compelled to decree "the nullity of all acts done and contracts realized (realizados) by the defendant corporation or entity"—however much time may have elapsed and however third parties may be affected and however the whole organiza-

tion of the corporation and the rights of stockholders and creditors may be upset (see translation, pp. 25, 26, *supra*).

This is shocking. But if Act No. 47 is valid and means what opposing counsel says, it certainly adds to the usury provisions of the Civil Code new and very severe penalties and compels the Supreme Court to examine those provisions in order to decide whether they are violated and in order to impose those penalties. Those Code provisions are thus extended to, and in some sense made a part of, the *Quo Warranto* Act by the words of Act No. 47.

Another important Puerto Rican statute that would be "extended" by Act No. 47 is Section 5(*b*) which by Act No. 48 of 1934 (p. 384) (Appendix, p. 81) was added to "The Law of Private Corporations", being Law No. 30 of March 9, 1911. This Section provides in great detail what books and records corporations must keep in Puerto Rico covering transactions with affiliated corporations and entities and the capital invested in Puerto Rico by such affiliated corporations, and it further provides that the failure to keep such books and records "shall constitute sufficient cause for the dissolution of a domestic corporation through a petition of *quo warranto* filed by, and in the name of, the Attorney General of Puerto Rico * * * *provided* that when the petition is made by the Treasurer or by any taxpayer, the Attorney General shall be bound to file the complaint in a District Court of competent jurisdiction."

Let us suppose that Corporation B, in the face of this rather formidable "express provision" of a Puerto Rican statute, fails to keep the required books and records in Puerto Rico. Until August 7, 1935, the only result of such failure would be a suit brought by the Attorney General in the District Court of Puerto Rico in which that court might dissolve the corporation and, probably, under the Quo Warranto Act of 1902, as amended, impose a fine.

But after August 7, 1935, Corporation B would, for that same failure to keep books and records, face a suit not in the District Court but only in the Supreme Court for violation of these "express provisions" and if its failure in any particular should be "satisfactorily established", the Supreme Court would be bound to enter judgment dissolving the corporation and imposing the heavy penalties above mentioned. Thus Act No. 47 "amended" or "extended" the provisions of Section 5(*b*) of the Law of Private Corporations by providing that the suit must be brought in the Supreme Court instead of the District Court, by omitting the provisions for a petition "by the Treasurer or by any taxpayer", by making the dissolution of the guilty corporation mandatory and by adding the startling penalties above mentioned; and Act No. 47 also conferred a new jurisdiction upon the Supreme Court—and all without re-enacting any of the provisions of Section 5(*b*).

So we have these two Acts "amending" or "extending" or "conferring" without re-enactment the provisions of the Joint Resolution, and also of many Puerto Rican statutes (if, as contended by opposing counsel the words "or of any of its statutes" mean Puerto Rican statutes)—in clear contravention of the words and spirit of the wise provisions of Section 34; and they must be held void. No better example could be imagined of the mischief which such constitutional provisions are intended to prevent—the blind and misleading legislation, which results from "amendment", "extension" or "conferring" by reference without re-enactment.

Opposing counsel may say that the words "or of any of its statutes", are intended to refer only to applicable statutes of Puerto Rico. But who shall say what are applicable? Is it good legislation, or improper legislation

to provide that violation by a corporation of the express provisions "of any of its statutes" shall subject the corporation to dissolution (by mandatory provision) and to the "cancellation of every entry or registration made" in the public registries and to the nullification of its acts and contracts? And to say that the Court may decide that certain Puerto Rican statutes are not applicable and may be ignored does not remedy the evil but creates an additional evil of uncertainty?

Moreover, even if only one Puerto Rican statute is held applicable and hence held to be "amended" or "extended", the violation of Section 34 and the invalidity of Act No. 47 are just as clear as if the full list of statutes was held to be applicable and hence "amended" or "extended".

POINT IV.

If it were open to Petitioner to urge that Acts No. 33 and No. 47 "amounted in effect to an adoption by reference of those provisions of the federal statutes as parts of the local Statutory Law" (Petitioner's Brief, p. 34), the contention could not aid its case.

Obviously incorporation or adoption by reference imports something more than mere reference. The reference must be of such character that the intention is manifest to incorporate or adopt.

Bouvier's Law Dictionary (Baldwin's Century Edition):

> "INCORPORATION BY REFERENCE. The bringing into one document in legal effect, of the contents of another by referring to the latter in such manner as to adopt it."

How such intent is to be manifested, whether by apt words in the document itself or by surrounding circumstances, must vary with the case and with the purpose to be accomplished by the adoption. It is sufficient here to indicate that the purpose of Petitioner's contention cannot be accomplished in the suggested manner, for such purpose is merely to brush away as unimportant the entire body of law affecting insular or state enforcement of federal penal statutes, the entire body of law dealing with statutes which "amend or extend" other statutes and to simplify to the point of absurdity the problem presented in this litigation. It is truly a *reductio ad absurdum.*

Our comment is pointed by noting that in his brief in support of the application for certiorari (p. 9), the Solicitor General stated that this Court in the *Shell* case "was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Anti-Trust Act but only its local equivalent". The same admission, though not so clearly set forth, permeates the entire argument contained in the brief of Petitioner; (while in his brief now before this Court, the Solicitor General has somewhat shifted his position and seeks to distinguish what he now calls the "dictum" of the *Shell* case from the instant case on the ground that the Sherman Anti-Trust Act is a statute of different character from the federal statute here involved.) Counsel for Petitioner therefore seeks for a "local equivalent" under which to justify the enactment of Act No. 47. He contends that Act No. 30 of the Laws of 1911 is such an equivalent, but not being certain that this Court will accept the views of Judge Peters in that respect, he seeks to find another "local equivalent" by arguing that Act No. 47, by mere reference to the Organic Act, thereby incorporates in Act No. 47 the Organic Act and thus, "pulling himself over the

fence by his own boot straps", he finds his "local equivalent"!

We may add a closely applicable comment upon "the old and well-worn short-cut route" in *Titusville Iron Works v. Keystone Oil Co.*, 122 Pa., at page 633, where the court says:

> "But the constitution of 1874, section 6, of article III, already referred to, requires all statutes to be self-explanatory and complete in their provisions, and forbids the extension, amendment, revival, or the use of any other method of conferring the benefits of previous legislation short of re-enactment at length. This effectually closes the old and well-worn short-cut route, and we cannot, no matter how much inclined we might be to do so, give effect, even as to future cases, to expository acts like that under consideration. They are void as an unauthorized exercise of judicial power, and they are void because of the infraction of section 6, of article III."

The Acts in question do not justify the argument for such incorporation; the necessary intent is lacking.

Act No. 33 purports to give the Supreme Court cognizance of *Quo Warranto* proceedings instituted "for violation of the provisions" of Section 752, Title 48, United States Code, and provides that such "violation" shall constitute a sufficient cause to institute a proceeding in the nature of *Quo Warranto*. Section 752 is a long section, including various provisions, of which one can be violated by individuals and one (regarding disposition of real estate within five years), can be violated by corporations; all the others, according to their wording, are merely mandates to the Legislature of Puerto Rico.

Act No. 47 purports to give the Supreme Court jurisdiction for violation by a corporation "of the express provisions of the Organic Act of Puerto Rico or of any of its

statutes". The Organic Act will be found printed in Spanish and English at the beginning of each volume of "Laws of Puerto Rico" for any regular session of the Legislature. It covers fifty-eight sections and sixty-eight pages, thirty-four for the Spanish version and thirty-four for the English.

Can the words of these Acts, or either of them, indicate any intent to make this long Section 752 or the Organic Act, or any specific part of those federal statutes, a part of the statutory law of Puerto Rico in such sense as to give foundation for the "short-cut" argument of the Petitioner? We think not.

POINT V.

The special limited jurisdiction of the Supreme Court cannot be sustained on the ground that the respondent has "violated" the provisions of its articles of incorporation.

If, by the words "or of any of its statutes", Act No. 47 means Puerto Rican statutes, that Act is invalid as "amending" or "extending" various Puerto Rican statutes without reenactment, contrary to Section 34 of the Organic Act, as we show in Point III above.

Whether or not the Act refers to Puerto Rican statutes, it is clear that neither Act No. 33 nor Act No. 47 gives jurisdiction for the violation of articles of incorporation.

The jurisdiction of the Supreme Court can be found nowhere but in one or the other of these two Acts and their wording shows that no jurisdiction is given for violation of articles of incorporation.

Act No. 33 purports to give the Supreme Court jurisdiction for "violations of the provisions" of Section 752—not for violation of charter restrictions. Act No. 47 pur-

ports to give the Supreme Court power to entertain *Quo Warrayto* proceedings for "violation of the express provisions of the Organic Act of Puerto Rico * * *"—not for violations of charter provisions.

Even though the "provisions" of Section 752 or of the Organic Act should be found in articles of incorporation, the Acts in question give no jurisdiction to the Supreme Court.

A corporate charter is not a statute and violation of its provisions is not a violation of a statute although the act or omission which violates the charter may also violate one or more statutes.

In the grant of jurisdiction to the Supreme Court, the legislature apparently makes a distinction between "*ultra vires*" acts and "illegal" acts. Of the first class of acts jurisdiction remains in the district courts; of the latter class jurisdiction is vested in the Supreme Court.

Such a distinction is clear and rests upon a sound legal basis which the following excerpts will serve to illustrate.

> "Ultra vires and illegality represent totally different ideas. Bissell *v.* R. R., 22 N. Y. 269. Ultra vires contracts are, strictly speaking, only those which are defective solely because they are beyond the power of the corporation when they involve some adventure or undertaking not within the scope of the charter, which is the rule of its corporate action. * * *
>
> If the contract is illegal, as in violation of established principles of public policy, it can not, of course, be enforced."
>
> *Maryland Trust Co.* v. *Nat'l Mechanics Bank*, 102 Md. 608, 614; 63 Atl. 70, 72.

> "The phrase 'ultra vires' unfortunately has been used to designate, not only acts beyond the express and implied powers of the corporation, but also acts

which are contrary to public policy or contrary to some statute expressly prohibiting them. The latter class of acts are now termed 'illegal,' and the term 'ultra vires' is confined to the former class. 'Ultra vires contracts are contracts which are beyond the statutory powers of the corporation, and not contracts expressly prohibited by statute and contrary to the public policy of the Legislature'. Cook on Corporations (7th Ed.), Vol. 3, p. 2161, note."

In re Grand Union Co. (C. C. A., 2nd Circuit), 219 Fed. 353, 363.

There appears to be no end to the ingenuity of counsel in suggesting arguments for the validation of this legislation. As a last resort the Solicitor General seems to argue that when in Act No. 33 the *provisions* of Section 752 of Title 48 are mentioned and when in Act No. 47 the *express provisions* of the Organic Act are mentioned, the Legislature of Puerto Rico thereby intended to say, the provisions of any local corporation act or of any articles of incorporation which embodied the same or similar provisions or provisions somewhat resembling those of the statutes referred to. This is indeed ingenuity carried to the point of casuistry.

POINT VI.

In any event the allegations of the amended information do not embrace a charge of violation of a statute of Puerto Rico.

Territory of New Mexico v. *Ortiz*, 1 N. M. 5;
Westbrook v. *Wicks*, 36 Iowa 382;
Maxwell v. *Burton*, 2 Utah 595;
State v. *Nashville Baseball Club*, 127 Tenn. 292, 309-311, Ann. Cas. 1914 B. 1243;

People v. *Manhattan Real Estate & Loan Co.*, 175 N. Y. 433.

In the last cited case the court states (p. 135):

> "When the action is based upon an alleged violation of law the complaint should distinctly state what law or what provision of the corporate charter has been violated."

POINT VII.

Petitioner's contention (Brief, 42, 43) that the purported grant of jurisdiction in Act No. 47 in cases of violation "of any of its statutes" is separable from the grant of jurisdiction covering violations of the Organic Act, and thus could be separately sustained, is untenable.

We submit that the cases cited by Petitioner (and relied on by Judge Peters in his dissent) do not bear out its contention, and that such contention is negatived by the rulings of this Court in:

Williams v. *Standard Oil Co.*, 278 U. S. 235, 241;
Yu Cong Eng v. *Trinidad*, 271 U. S. 500;
Carter v. *Carter Coal Co.*, 298 U. S. 238, 312.

Act No. 47 contains no provision that if any part of the Act is held invalid the remainder of the Act shall not be affected thereby.

This Court has repeatedly held that in the absence of such a provision the presumption arises that the legislature intends an Act to be effective as an entirety.

In *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312, the case last above cited, the Court said:

"In the absence of such a provision, the presumption is that the legislature intends an act to be effective as an entirety—that is to say, the rule is against the mutilation of a statute; and if any provision be unconstitutional, the presumption is that the remaining provisions fall with it. The effect of the statute is to reverse this presumption in favor of inseparability and create the opposite one of separability. Under the non-statutory rule, the burden is upon the supporter of the legislation to show the separability of the provisions involved. Under the statutory rule, the burden is shifted to the assailant to show their inseparability. But under either rule, the determination, in the end, is reached by applying the same test—namely, What was the intent of the lawmakers?"

A somewhat fuller statement of the rule is found in *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241.

No showing has been made by the Petitioner to demonstrate the separability of these provisions.

On the other hand, an examination of Acts Nos. 33, 44, 47 and 48, all of which were passed at the same special session of 1935, and forming, as related legislation, parts of a general plan, will convincingly demonstrate that the legislature would not have passed the provisions of Act No. 47 upon which Petitioner now rests without the provisions vesting jurisdiction in the Supreme Court on the ground of violations of provisions of the Joint Resolution and the Organic Act and without the penalties established in the same Act.

In Conclusion.

In the last analysis although many questions are presented and must be decided, the case presents a single problem, namely: Whether two Puerto Rican statutes, Nos. 33 and 47 of the Special Session of 1935, which we contend are clearly invalid as repugnant to the provisions of the Organic Act of Puerto Rico and in excess of the powers of the Insular Legislature, are to be sustained by this Court, notwithstanding that there is now and has been for many years prior to the enactment of Acts Nos. 33 and 47 ample statutory provision in Puerto Rico whereby the People can challenge the right of a corporation to exercise its corporate franchise. We do not and could not contend that the Puerto Rican District Courts are without jurisdiction to entertain *Quo Warranto* proceedings against a corporation to determine whether it is engaged in unlawful or *ultra vires* activity under local law or its corporate charter. The question here is not whether the Insular Courts have or could be given such power. The question is whether Acts Nos. 33 and 47 shall be sustained for the sole reason that they provide for *Quo Warranto* proceedings and that it suits the purposes of Petitioner to seek the imposition of the penalties provided in them.

Counsel for Petitioner and Solicitor General have made much of public policy and they have talked extensively of the public policy of Puerto Rico. There is no public policy which requires that the clear unambiguous expression of the will of Congress in a field in which it properly is legislating should be disregarded or violated. Section 34 of the Jones Act is neither unusual nor does it lack traditional precedent. As we have shown, "amend and extend" provisions are found in many state constitutions.

There is paramount public policy in requiring all branches of the Insular Government, to comply with the letter and spirit of the Organic Act of 1917, and there is likewise paramount public policy in permitting no branch of the Insular Government to usurp the functions of Congress in a field which belongs to Congress. When Congress in Section 39 of the Jones Act required the Governor of Puerto Rico to report regarding holdings by corporations, partnerships and individuals in excess of 500 acres it exhibited its interest in the situation. Presumably that report was filed and Congress was not moved to take action on the basis thereof. Similarly, when in April 1935, several months before the passage of Acts No. 33 and No. 47, the Puerto Rico Legislature requested Congress to authorize the levying of progressive taxes on estates of 500 acres owned by or acquired for the benefit of corporations, and additional taxes on real property owned or worked for the benefit of persons non-resident of Puerto Rico and to pass "such measures as contained in the present resolution as well as of any other legislation making more effective the enforcement thereof" (R. 261) and when Congress failed to take action on this resolution, Congress was acting negatively upon the proposition that it implement the Joint Resolution. There is a high public policy in not taking the matter out of Congress' hands because of impatience at Congressional inaction or because of a desire on the part of Petitioner to break up land-holdings at the present time (*Helvering* v. *Wood*, *supra*). And there is certainly a wide public policy involved in requiring any action that may be taken to be in compliance with existing valid remedial legislation.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

HENRI BROWN,
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GEORGE M. WOLFSON,
Of Counsel.

February, 1940.

Appendix.

Statutory Provisions.

Federal Statutes:

Sec. 3 of the Joint Resolution No. 23 of the Fifty-sixth Congress, Sess. I, approved May 1, 1900, 31 Stat. 715, 716, provides:

"SEC. 3. That all franchises, privileges or concessions granted under section thirty-two of said Act shall provide that the same shall be subject to amendment, alteration, or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends; and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in

Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable."

The former Organic Act for Puerto Rico, of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided, in relevant parts:

"SEC. 8. That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this Act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by Act of Congress of the United States: * * *.

The present Organic Act for Puerto Rico, of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides, in relevant parts:

"SEC. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

* * * * * * *

That no law impairing the obligation of contracts shall be enacted.

* * * * * * *

That no ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

* * * * * * *

"SEC. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have

the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: * * *

* * * * * * *

"SEC. 34. That * * *

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

* * * * * * *

"SEC. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

* * * * * * *

"SEC. 39. That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for

the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

"SEC. 40. That the judicial power shall be vested in the courts and tribunals of Porto Rico now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law: *Provided, however*, That the chief justice and associate justices of the supreme court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico.

"SEC. 41. That Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' The President, by and with the advice and consent of the Senate, shall appoint one district judge, * * *. The district court for said district shall be called 'the District Court of the United

States for Porto Rico,' and shall have power to appoint all necessary officials and assistants * * *. Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. * * *

"SEC. 42. That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. * * *

* * * * * * *

[*Memo.*—Amendments of this Act do not affect the parts above quoted.]

Title 48, U. S. C., c. 4, **Section 752**, provides:

"§752. SPECIAL PROVISIONS IN FRANCHISES; CORPORATE REAL-ESTATE HOLDINGS. All grants of franchises and privileges under section 750 of this title shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership

and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Puerto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (May 1, 1900, No. 23, §8, 31 Stat. 716; Mar. 2, 1917, c. 145, §39, 39 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158.)"

General Orders No. 118, as promulgated by Brigadier-General Davis, U. S. Volunteers, Military Governor of Puerto Rico, August 16, 1899 (H. R. Document No. 1484, 60th Congress, 2d Session, Part 4, pp. 2246-2256), provided, in relevant parts:

"General Orders, Hdqrs. Department of Porto Rico,
No. 118. San Juan, August 16, 1899.

Upon the recommendation of the judicial board, the following reorganization and functions of the judiciary of this island were approved on August 10, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the courts of justice of this island will, from the 10th inst., undergo reforms in accordance with the following dispositions:

2. There shall be a supreme court of justice with fixed residence in the city of San Juan, composed of a chief justice and four associate justices, who jointly will constitute a judicial bench for all civil and criminal business; the court shall also have a prosecuting attorney, one secretary, two court clerks,

one file clerk and taxer of costs, six clerks, one janitor, and two bailiffs.

* * * * * *

9. Justice in civil and criminal matters will be administered in each district by a court established in its respective capitol. These courts will have exclusive jurisdiction and public oral trial of all classes of civil and criminal matters under the forms and procedure established further on in this general order.

* * * * * *

10. Each district court will be composed of three judges, one of whom shall be presiding judge, and who jointly shall constitute a bench for civil and criminal business. To each district court there shall be attached a prosecuting attorney, who will represent the law in criminal cases and in civil cases when in order.

* * * * * *

12. * * *

The supreme court of justice is hereby abolished. It shall hand over all matters pending before it to the supreme court established by the foregoing provisions.

* * * * * *

14. Business in progress before courts of instruction and first instance courts shall be turned over with due formalities to the district courts corresponding to each respective judicial district.

* * * * * *

47. All civil litigations between parties when the amount exceeds $400 U. S. currency, shall be originally heard and decided before the respective district court in the form established by the following articles.

* * * * * *

78. Appeal to the supreme court will lie in all civil suits for infraction of law and error in pro-

cedure in the cases which the law of civil procedure defines for the latter, but not for suits heard before municipal courts.

* * * * * * *

87. All provisons of the laws of civil and criminal procedure relative to the substantiation of appeals which are in opposition to the provisions of this order are repealed."

* * * * * * *

[Memo.—General Orders, No. 195, as promulgated by Brigadier-General Davis, U. S. Volunteers, Military Governor of Puerto Rico, November 29, 1899, are not here set forth because they relate only to police courts and their jurisdiction.]

Puerto Rican Statutes:

"**An Act Establishing the Supreme Court of Porto Rico as a Court of Appeals**", approved March 12, 1903, Laws of 1903, p. 59, (Section 1 of said Act appears in Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241, and Code of Civil Procedure of Puerto Rico, 1933 Ed., Appendix p. 293), provides, in relevant parts:

"SECTION 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. * * *

* * * * * * *

SECTION 4.—In all cases where reference is made in the Law of Civil Procedure to actions on cassation, the same shall be construed as meaning actions on appeals."

* * * * * * *

Sections 13, 1649 and 1652 of the Civil Code of Porto Rico, 1930 Ed. (pps. 343-345), read:

"SECTION 13.—(Section 1, Act No. 8 of 1917—2. p. 210.) That in case of discrepancy between the English and Spanish texts of a statute passed by the

Legislative Assembly of Porto Rico, the text in which the same originated in either house, shall prevail in the construction of said statute, except in the following cases: (a) If the statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text shall be given preference over the Spanish. (b) If the statute is of Spanish origin, the Spanish text shall be preferred to the English. (c) If the matter of preference cannot be decided under the foregoing rules, the Spanish text shall prevail."

"SECTION 1649.—*(Section 1, act of March 1, 1902, as amended by act of March 12, 1903, page 109, Comp. of 1911, No. 4172.)* In the absence of an agreement in writing entered into and executed at the time, the rate of interest upon the loan or forbearance of money or goods, or upon any variety of obligation or contract or upon unpaid judgments, shall be at the rate of six dollars annually on each one hundred dollars or upon its equivalent in value and at the same rate for a greater or less sum or for a longer or shorter period. *Provided, however,* That no rate of interest shall be fixed by special agreement in excess of twelve dollars a year on each one hundred dollars or upon its equivalent of value. Within the limit here defined it shall be lawful to discount bills and notes and other similar obligations.

SECTION 1652.—*(Section 4, act of March 1, 1902, as amended by act of March 14, 1907, Comp. of 1911, No. 4175, and sections 3 and 4 of act No. 47, of April 13, 1916, p. 100.)* No person, except as authorized by the preceding section, shall demand or receive, directly or indirectly, any money or goods, at any greater rate of interest for the loan or extension of time of said loan, than the rate provided for herein. Nothing in this chapter shall be taken to prohibit the sale of goods for cash at a less price than for credit.

No contract wherein or whereby there is reserved, accepted or secured, or agreed to be reserved, accepted or secured, any greater rate of interest than as allowed by this chapter, may be made effective in any court in Porto Rico. * * *

Code of Civil Procedure of Puerto Rico (Edition of 1933), p. 41, reads in relevant parts:

"SECTION 104.—(427 Cal.) (*As amended by Act No. 4, March 30, 1933.*)—The plaintiff may join several actions in one complaint, * * *"

"9. The action so joined must all belong to one only of these classes; must affect all the parties to the action; shall not require different places of trial, and shall be separately stated; but an action for malicious arrest and prosecution, or for either of them, may be joined with an action for either an injury to character or to the person; *Provided*, That if actions joined in one complaint are not stated separately, exception may be taken to the complaint on the ground set forth under number 7 of section 105."

"SECTION 105.—(430 Cal.) The defendant may demure to the complaint within the time required in the summons to answer, when it appears on the face thereof, either: * * *

"7. That the complaint is ambiguous, unintelligible, or uncertain."

Act No. 30, entitled "**An Act to Establish a Law of Private Corporations**", approved March 9, 1911, Laws of 1911, pp. 87-115, Comp. of Rev. Stats. and Codes of Porto Rico, 1911, pp. 89-107, (subsequent amendments do not affect parts quoted below), reads, in relevant parts:

"Article I.

ORGANIZATION OF CORPORATIONS AND REVOCATION OF INCORPORATION.

* * * * * * *

SECTION 3.—Every corporation has power:

* * * * * * *

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require; and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in Section 3 of the Joint Resolution of the Congress of the United States, of May 1, 1900.

SECTION 4.—No corporation formed under this Act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the Statutes of the United States concerning banks.

Section 5 (*b*) of said Act No. 30, inserted therein by amendment by Act No. 48, approved May 13, 1934, Laws of 1934 (pp. 384-388), reads:

"'SECTION 5(*b*).—Every corporation organized under this Act, chapter, or title, before it receives its certificate of incorporation, or before it can enjoy the privilege of continuing to do business in Puerto Rico, in an incorporated form, must keep in Puerto Rico not only its adequate account books exactly reflecting the funds and property invested in the business conducted by such corporation, the receipts and revenues derived from such business, the capital in-

vested, and its operations within and without Puerto Rico, but also a full detail of all transactions carried out between the affiliated companies, whether corporations, limited partnerships, or trust companies, in sufficient detail to show the actual receipts, not only of said domestic corporation, but also of all its affiliates, in the transactions carried out within the Island of Puerto Rico, and also as to the capital directly or indirectly invested in Puerto Rico by said affiliated corporations. The failure to keep such books and records shall constitute sufficient cause for the dissolution of a domestic corporation through a petition of *quo warranto* filed by and in the name of the Attorney General of Puerto Rico, whether on his own initiative or at the instance of the Treasurer of Puerto Rico or of any taxpayer; *Provided*, That when the petition is made by the Treasurer or by any taxpayer, the Attorney General shall be bound to file the complaint in a district court of competent jurisdiction.' "

Act No. 33, approved July 22, 1935, Laws of 1935, Special Session, p. 418, entitled **"An Act to Confer upon the Supreme Court of Puerto Rico Exclusive Original Jurisdiction in *Quo Warranto* Proceedings that the Government of Puerto Rico May Institute for Violations of the Provisions of Section 752, Title 48, United States Code,** and for Other Purposes", reads:

"*Be it enacted by the Legislature of Puerto Rico:*

SECTION 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

SECTION 2.—All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 3.—This Act, being of an urgent character, shall take effect immediately after its approval."

Act No. 44, approved August 6, 1935, Laws of 1935, Special Session, pp. 508-510, provides, in relevant parts:

'SECTION 3(*a*).—In addition to the purposes specified in the foregoing Section 3, private property may be taken or destroyed to carry out and develop any general plan of economic reconstruction for the general benefit of the insular community, implanted by The People of Puerto Rico or by the Government of the United States, but through the Government of Puerto Rico, provided said plan is previously approved by the Economy Commission of the Legislature of Puerto Rico, and especially for the redistribution or division of lands concentrated in large estates, or for the establishment of public centrals or factories for the manufacture of sugar or for any industry or activity. For the said purposes, condemnation proceedings may be instituted against lands or their accessories, such as buildings, machinery, factories, electric power plants, wharves, bulkheads, dikes, quays, or any other structure either similar or for like purposes.

'For the purposes of this section, all works and projects to be carried out under any general plan of economic reconstruction for Puerto Rico, and especially for the purposes enumerated in the foregoing paragraph, are declared of public utility, and likewise, all such real properties and their accessories as above enumerated, as may be necessary to carry out the purposes stated, are hereby also declared of public utility and may be condemned without the previous declaration of public utility prescribed in Section 2 hereof.' * * *

'Condemnation proceedings may be instituted by The People of Puerto Rico or by the Government of the United States, through The People of Puerto Rico or any board or commission created by the Legislature of Puerto Rico, to carry out the above-mentioned purposes.'

* * * * * * *

Secs. 2 and 6 of the **"Act Establishing *'Quo Warranto'* Proceedings" approved March 1, 1902**, Laws of 1902, pp. 201-203, as amended by Act No. 37, approved April 24, 1931, Laws of 1931, pp. 354-356,—as in force up to the time of the approval of Act No. 47, of August 7, 1935, and as in force thereafter except insofar as amended by said Act No. 47—read:

SECTION 2.—That in case any person should usurp or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Porto Rico, or any public officer shall have done, or suffered any act which, by the provisions of the law, works a forfeiture of his office, or any association or number of persons shall act within Porto Rico as corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law: The attorney general or any fiscal of the respective district courts, either of his own accord or at the instance of any individual relator, may present a petition to the district court of competent jurisdiction, for leave to file an information in the nature of 'Quo Warranto' in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.

Where it appears to the court that the several rights of divers parties to the same office or fran-

chise may properly be determined on one petition, the court may give leave to join all such persons in the same petition in order to try their respective rights to such office or franchise.

SECTION 6.—(*As amended by Act No. 37, Laws of 1931.*) In case any person or corporation against whom any such petition is filed is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise, and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions; *Provided*, That instead of judgment of ouster from a franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense; *And provided, further*, That whenever a judgment is rendered by which the defendant is declared to have usurped any public office or to be unlawfully performing the duties thereof, said defendant shall immediately retire from said office and cease performing the duties thereof. If he should fail to do so, the Court on application of the Attorney General or of any person having an interest in said office, shall direct the issuance of final process to the marshal ordering him to oust the said defendant.

Whenever judgment is rendered in favor of any defendant, such defendant shall recover from the relator his costs, including reasonable attorney's fees.

Act No. 47. Approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, reads:

Be it enacted by the Legislature of Puerto Rico:

SECTION 1.—Section 2 of An Act entitled "An Act establishing Quo Warranto proceedings", approved March 1, 1902, is hereby amended as follows:

"SECTION 2.—In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise."

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

SECTION 2.—Section 6 of an Act entitled "An Act establishing *Quo Warranto* proceedings," approved March 1, 1902, is hereby amended as follows:

"SECTION 6.—In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; *Provided*, that whenever sentence is pronounced declaring that the defendant has usurped or is unlawfully exercising the functions of any public office, said defendant must cease immediately in said office, and abandon the same; and if he fails to do so, the court, on petition of the Attorney General or of any person interested in the office, shall issue an order to the marshal compelling him to oust the defendant from office.

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree

the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.*

"The violation of an order prohibiting the doing of business after final judgment is rendered shall be punished by a maximum fine of five hundred (500) dollars for each day such entity may continue in operation, enforceable on the property of the entity, and the persons representing it shall be guilty of contempt of court, punishable by imprisonment for a minimum term of from one to six months in jail.

"Whenever judgment is rendered in favor of any defendant, such defendant may recover costs from the plaintiff, including a reasonable attorney's fee.

"For the purpose of fixing the value of the property, The People of Puerto Rico, through its agents or representatives, is authorized to enter the properties the object of the controversy, whatever their nature or condition may be."

SECTION 3.—All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 4.—This Act, being of an urgent character, shall take effect immediately after its approval.

* We question this translation. See page 26, *supra*.

Act No. 48, approved August 7, 1935, Laws of 1935, Special Session, pp. 536-538, provides, in relevant parts:

"SECTION 1.—Every act or contract which in any form impairs, affects, or violates the provisions contained in Section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900, regarding the purchase, sale, or possession of real property, shall be illegal.

SECTION 2. — Every corporation which openly, fraudulently, or by misrepresentation, or in any way acquires lands in violation of the provisions of Section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900, regarding the purchase; sale, or possession of real property, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a minimum fine of five hundred (500) dollars and a maximum fine of one thousand (1,000) dollars.

* * * * * *

SECTION 5.—The district courts of Puerto Rico are hereby vested with exclusive original jurisdiction to hear, try, and decide all cases of violation of this Act, without right to a trial by jury.

SECTION 6.—All laws or parts of laws in conflict herewith are hereby repealed.

* * * * * *"

FILED
JAN 13 1940
CHARLES ELMORE CROPLEY
CLERK

No. 582.

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE PEOPLE OF PUERTO RICO, PETITIONER

v.

RUBERT HERMANOS, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MORANDUM OF THE UNITED STATES, AS AMICUS CURIAE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the circuit court of appeals (R. 315–329) and the dissenting opinion of Judge Peters (R. 330–332) are reported in 106 F. 2d 754. The opinion of the Supreme Court of Puerto Rico (R. 285–304) is reported in 53 P. R. 779, Spanish edition. The English edition has not yet appeared.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered on September 27, 1939 (R. 333). The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Acts Nos. 33 and 47, Laws of Puerto Rico, Special Session, 1935, pp. 418, 530–536, are invalid, the former *in toto* and the latter in part, as attempting to amend or enforce Section 3 of the Joint Resolution of May 1, 1900, 31 Stat. 715, 716; 48 U. S. C., Sec. 752.

2. Whether the complaint in this case is sufficiently definite.

STATUTES INVOLVED

The pertinent portions of the applicable statutes are set out in full in the Appendix to the petition. They may be summarized as follows:

Joint Resolution No. 23, approved May 1, 1900, 31 Stat. 715, in effect amended the former Organic Act of Puerto Rico, the Foraker Act of April 12, 1900, c. 191, 31 Stat. 77. Section 3 of the Joint Resolution, now 48 U. S. C., Sec. 752, provides that "every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land." This provision was specifically continued in effect by Section 39 of the present Organic Act of Puerto Rico, the Jones Act of March 2, 1917, c. 145, 39 Stat. 951, 964.

The Puerto Rico private corporation law, Article I, Section 3, paragraph 4 (Code of Commerce (1932), p. 327), provides "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the

United States, of May first, nineteen hundred." This provision was first enacted in this form in Act No. 30, approved March 9, 1911, Pars. 407 *et seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89–90.

The "Act Establishing *Quo Warranto* Proceedings", approved March 1, 1902 (Rev. Stats. and Codes of Porto Rico, 1902, Pars. 779–787, pp. 282–284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319–1327, pp. 268–269), provides that if any corporation does or omits any act which amounts to a forfeiture of its corporate rights, or exercises rights not conferred by law, the Attorney General may proceed against the corporation by *quo warranto* in the appropriate district court.

Act No. 33, approved July 22, 1935 (Laws of Puerto Rico, Special Session, 1935, p. 418) provides:

> SECTION 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

Act No. 47, approved August 7, 1935 (Laws of Puerto Rico, Special Session, 1935, pp. 530–532), provides:

> SECTION 2. In case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General * * * may file before any district court of Puerto Rico

> a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, * * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General * * * may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *

The portion of this section preceding the first semicolon was derived from Rev. Stats. and Codes of Porto Rico (1902), Par. 780, p. 282. The succeeding portion was new.

STATEMENT

This action was initiated in the Supreme Court of Puerto Rico by a motion by the Attorney General of Puerto Rico for leave to file a complaint of *quo warranto* against the respondent (R. 1). Leave to file the complaint was granted (R. 35).

The amended complaint alleges (R. 44–47) that respondent was organized under the laws of Puerto Rico in 1927, that its articles of incorporation (set out at R. 5–14) provide "that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to five hundred acres only, and subject to the restriction set up in Section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the

United States of America" (R. 8); that notwithstanding this restriction and in violation of the Joint Resolution respondent owns and controls some 12,188 acres of farming land; that this holding and control is contrary to the public policy of Puerto Rico as first enunciated by the Joint Resolution of May 1, 1900, and since reiterated by Acts Nos. 33 and 47 of the Second Special Session of the Puerto Rican legislature of 1935. The complaint prays the court to adjudge respondent to have forfeited its franchise, to order its dissolution, and to impose on it the proper fine (R. 47).

The respondent filed demurrers (R. 51–59) in which it contended, among other things, that the court was without jurisdiction because the proceeding was brought with the object of charging respondents with a violation of a law of the United States, that is, the Joint Resolution of May 1, 1900, and that jurisdiction, if any, of violations of that law was in the federal courts (R. 51); that Act No. 33 of July 22, 1935, and Act No. 47 of August 7, 1935, are void as attempts to amend the Joint Resolution by conferring jurisdiction upon the Supreme Court of Puerto Rico to punish violations thereof (R. 52–53); and that the complaint is ambiguous, unintelligible, and uncertain (R. 58). The Court overruled the demurrers for reasons stated in its opinion in a similar case decided at the same time (R. 81–82). In that opinion (R. 68–81) the Court upheld the validity of Acts No. 33 of July 22, 1935, and No. 47 of August 7, 1935.

The respondent then filed an answer admitting that it owns and controls the lands alleged in the complaint (R.

92), but setting up various defenses. At the trial petitioner introduced documentary evidence designed to show the necessity and justification for the 500 acre limitation (R. 130–284). Respondent introduced no evidence.

The Supreme Court of Puerto Rico entered judgment against respondent (R. 305–306). It found respondent guilty of violating the provisions of the Joint Resolution of May 1, 1900, and its own articles of incorporation by which it was restricted to the ownership and control of lands not in excess of 500 acres (R. 305). It ordered the forfeiture and cancellation of respondent's license and the dissolution and winding up of its affairs, and that respondent pay costs, including $2,000 as attorneys' fees, and a fine of $3,000 (R. 305).

The circuit court of appeals held that Acts Nos. 33 and 47 are invalid in that they amend and enlarge the scope of the Joint Resolution of May 1, 1900, and in that they confer jurisdiction upon the Supreme Court of Puerto Rico to impose penalties for violations of that Resolution; and that even if the provisions of Act No. 47 which authorize *quo warranto* for violation of Puerto Rican statutes are separable from the provision authorizing *quo warranto* for violation of the Resolution, that the complaint did not allege a violation of Puerto Rican law with sufficient definiteness to constitute a good charge.[1] Judge Peters, dissenting, agreed

[1] The court also said that Puerto Rico had condoned respondent's violations of the 500-acre restriction, and that it therefore should not be permitted to forfeit respondent's land. However, Puerto Rico had neither sought nor received a decree of forfeiture of respondent's land, and the judgment of the circuit court of

that Act No. 33 was invalid but thought that Act No. 47 could be interpreted as imposing only a penalty for violation of corporate restrictions imposed by the Puerto Rican legislature pursuant to the mandate of the Joint Resolution, and that in any event it had separable provisions penalizing violations of local law which were sufficient to support the judgment of the Supreme Court. Whether the complaint was sufficiently definite he thought to be a local question as to which the Puerto Rican court should not be reversed.

INTEREST OF THE UNITED STATES

This proceeding was brought to effectuate the policy, embodied in both federal and Puerto Rican legislation, that a corporation authorized to engage in agriculture shall not own or control more than 500 acres of land in Puerto Rico. It is as much to the interest of the United States that this prohibition be enforced by the insular authorities as that it be enforced by federal authorities; indeed, the peculiarly local nature of the problem with which the 500-acre restriction deals especially qualifies the insular authorities for its enforcement.

REASONS FOR GRANTING THE WRIT

I

The court below held that Acts Nos. 33 and 47, Laws of Puerto Rico, Special Session, 1935, are invalid, the former *in toto* and the latter in part, as attempting to amend or enforce the Joint Resolution of May 1, 1900. This holding is probably erroneous.

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appeals recited that it is "without prejudice to future proceedings under valid statutes" or in the federal courts based on a violation of the Joint Resolution (R. 333).

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Congress by the Joint Resolution of May 1, 1900, directed that every corporation thereafter authorized by the insular government to engage in agriculture should by its charter be restricted to the ownership and control of not to exceed 500 acres of land.

Puerto Rico provided, in its general corporation law (*supra*, p. 2), that the power of corporations organized thereunder to hold real estate should be subject to the restriction contained in the Joint Resolution, and respondent's articles of incorporation likewise so provide (R. 8). Act No. 33 of the Laws of Puerto Rico, Special Session, 1935, authorizes and confers jurisdiction on the Supreme Court of Puerto Rico of *quo warranto* proceedings "for violations of the provisions of Section 752, Title 48, United States Code," which restates the Joint Resolution of 1900. Act No. 47, Laws of Puerto Rico, Special Session, 1935, amended the *quo warranto* Act of 1902. The earlier Act provided that if "any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law," the Attorney General might proceed against it by *quo warranto* before the appropriate district court of Puerto Rico. Act No. 47 retains this provision, but in addition provides that whenever any corporation violates "the express provisions of the Organic Act of Puerto Rico, or any of its statutes," the Attorney General may proceed against it by *quo warranto* in the Supreme Court of Puerto Rico.

The vice of these two Acts, the court below held, is that they provide for the enforcement of the 500-acre restriction in the Joint Resolution of 1900 (embodied in

48 U. S. C., Sec. 752, and in the Organic Act of Puerto Rico) rather than solely for the enforcement of the restriction as contained in the Puerto Rico corporation law or in corporate charters. For this reason the circuit court held Act No. 33 invalid *in toto* and Act No. 47 invalid insofar as it provided for enforcement of the restriction in the Organic Act.

In *Puerto Rico* v. *The Shell Co.*, 302 U. S. 253, the Court held that the fact that the Sherman Antitrust Act was applicable to Puerto Rico did not preclude adoption by the legislature of Puerto Rico and enforcement in the local courts of a local antitrust act substantially similar to the Sherman Act. The Court was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Antitrust Act but only its local equivalent. See 302 U. S. at 271. It may be that Puerto Rico could not, therefore, proceed against the respondent for violation of the 500-acre restriction in the Joint Resolution if the Resolution were an ordinary prohibitory federal statute, although Puerto Rico could, even upon that assumption, proceed against the respondent for violating the 500-acre restriction in the Puerto Rican corporation law or in respondent's corporate charter. The court below assumed that the Joint Resolution was an ordinary federal statute, like the Sherman Act, and held that Acts Nos. 33 and 47 authorized proceedings for violation of the Joint Resolution rather than solely for violation of the local law or the charter. We believe that this holding is erroneous, but challenge first the more basic assumption as to the nature of the Joint Resolution.

1. A statute like the Sherman Act is not a mandate to or limitation upon the insular government, but runs directly against the individuals. A proceeding to enforce its prohibitions would, therefore, in the absence of duplicate insular legislation, necessarily be a proceeding solely to enforce a federal statute. The Joint Resolution does not operate at all in the same fashion as the Sherman Act, and, as the fact that this proceeding is in *quo warranto* emphasizes, a proceeding to enforce the 500-acre restriction of the Joint Resolution is in no sense a proceeding solely to enforce a federal statute, but is rather a proceeding to challenge the exercise of a power in excess of that conferred by local law.

The Joint Resolution is a part of the Organic Act of Puerto Rico. The Resolution is primarily a limitation upon the powers of the government of Puerto Rico. It prohibits that government from empowering any corporation to hold more than 500 acres of agricultural land in Puerto Rico. It is plain, therefore, that the respondent, by owning and controlling more than 500 acres of land in Puerto Rico, is exercising powers not conferred by local law. This is so because of the express provision contained in the insular statute and in respondent's charter. It is likewise, and independently so, because the federal statute prohibits the insular government from conferring upon a corporation such as the respondent power to own and control more than 500 acres of land. If the insular statute or the charter had attempted to confer a greater power, it would to that extent be invalid. Notwithstanding any such attempt to confer a greater power, the People of Puerto Rico would have standing to challenge in a

proceeding in *quo warranto* the exercise by the respondent of power which, as a result of the prohibition contained in the federal statute, is in excess of that conferred by local law.

Every grant of franchise by a body politic is subject to the condition that it may be forfeited or revoked by the granting authority if under the color of its authority the grantee exercises powers not conferred by local law. Consequently, there can be no doubt as to the power of The People of Puerto Rico, by a proceeding in *quo warranto* for the forfeiture of the respondent's franchise, to challenge the exercise of powers in excess of those conferred by local law. That is what Acts Nos. 33 and 47 authorize. While, literally, they provide for proceedings to challenge violations of the provisions of the Joint Resolution, they do not attempt to authorize direct enforcement of the Joint Resolution but only of the limitation on the powers of local corporations as a matter of local law which stems from the restriction in the Joint Resolution. That is necessarily so from the nature of a *quo warranto* proceeding, which is to challenge an exercise of power asserted to be in excess of that conferred upon the corporation by the complaining sovereign. Certainly it is a permissible interpretation of the Acts if necessary to save their validity.

2. Wholly aside from these considerations, and viewing the Joint Resolution not as limiting the power of the Puerto Rican government but as standing on the same footing as an ordinary federal statute running solely against individuals, it is submitted that Acts Nos. 33 and 47 should have been upheld. It is clear from the

decision in the *Shell* case, and is apparently acknowledged by the court below, that if Acts Nos. 33 and 47 had provided for the enforcement of the 500-acre restriction in the Puerto Rican corporation law or in the respondent's corporate charter the Acts would be valid. And it can reasonably make no difference that the Acts refer directly to the national source of the restriction instead of to its insular embodiments. The Joint Resolution contemplated that it would be made effective by the Puerto Rican government and technically defective drafting of the Puerto Rican Acts, if there be such, should not invalidate the Acts since the intention of the insular legislature and its power to carry out that intention are both clear.

Acts Nos. 33 and 47 can, if necessary to save their validity, easily be viewed as providing for the enforcement of local measures incorporating the 500-acre restriction rather than for direct enforcement of the Joint Resolution. Both Acts deal with violation of the "provisions" of the Joint Resolution, and can be regarded as referring to those provisions as adopted in the Puerto Rican corporation law and in corporate charters. Or, the two Acts can be considered to adopt and reenact by reference the restriction of the Joint Resolution, as well as to provide for enforcement.

II

Act No. 47 authorized *quo warranto* both for violation of the provisions of the Organic Act and for violation of any of the statutes of Puerto Rico. The court below held that, even if the provision as to the statutes of Puerto Rico were separable from the invalid provi-

sion as to the Organic Act, the complaint was too indefinite to allege a valid charge for violation of Puerto Rican statutes. This holding fails to give effect to the doctrine that decisions of the Supreme Court of Puerto Rico on questions of local law are not to be reversed unless patently erroneous. *Bonet* v. *The Texas Co. (P. R.), Inc.*, decided January 2, 1940, No. 132, this Term.

The amended complaint alleges that by respondent's articles of incorporation its right to hold and control land is restricted to 500 acres only, "in conformity with the restrictions established in section 3 of the Joint Resolution" of May 1, 1900 (R. 44). The complaint then alleges that the respondent has violated this restriction by owning and controlling some 12,188 acres (R. 45). The court below held that the complaint was insufficient under Act No. 47 because it did not specifically charge a violation of any Puerto Rican statute (R. 329). Since the complaint charged a violation of the 500-acre restriction in respondent's charter, and stated that it was inserted in conformity with the Joint Resolution, it made no substantial difference that the Puerto Rican corporation law under which the charter was issued was not named. Certainly the holding of the Puerto Rican court that the pleading was sufficient was not so palpably erroneous as to warrant reversal.[2]

[2] The Supreme Court of Puerto Rico did not discuss this question in its main opinion, but passed upon it in overruling respondent's demurrers (R. 81–82; and R. 71–72).

III

It is not wholly clear whether the court below also held that the complaint must be dismissed because it sought to forfeit land for past violations of statutes long unenforced. See footnote 1, *supra*, p. 6, and R. 328. If it did so hold the decision is clearly erroneous: (a) the complaint did not seek forfeiture of land (R. 47), and the Supreme Court of Puerto Rico did not decree it (R. 305); and (b) respondent's violations of the 500-acre restriction are not only past but continuing.

IV

This case is of substantial public importance. Congress and the Puerto Rican legislature adopted the 500-acre restriction upon the conclusion, concurred in by the Supreme Court of Puerto Rico in this case, "that the existence of large land-holdings in a small agricultural country, abnormally overpopulated and without basic industries other than those required for the preparation of agricultural products for the market, is contrary to the economic welfare of its people" (R. 294–295). Such land holdings are, the Puerto Rican court said, an element of "the most intricate problem confronting the people of the Island" (R. 294). In the forty years which have elapsed since the Joint Resolution the present proceeding and related proceedings under Acts Nos. 33 and 47 of 1935 represent the first concerted effort which has been made to enforce this important Congressional and Puerto Rican policy. The decision below wholly defeats that effort.

The opinion of the court below, it is true, leaves the way open for the enactment of new legislation in lieu of

Acts Nos. 33 and 47, and perhaps even for the enforcement of Act No. 47 in a differently worded complaint. But the Government of Puerto Rico should not be required uselessly to delay enforcement of this important policy until it can devise both an act and a complaint which will satisfy the court below, which is already of the view that enforcement has been delayed too long to be fairly accomplished now (R. 328).

CONCLUSION

The decision below is incorrect. It strongly tends to thwart enforcement of an important policy adopted for Puerto Rico both by Congress and by the insular legislature. It is therefore respectfully submitted that the petition should be granted.

ROBERT H. JACKSON,
Solicitor General.

JANUARY 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940

No. 582

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE PEOPLE OF PUERTO RICO, PETITIONER

v.

RUBERT HERMANOS, INC.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES, AMICUS CURIAE

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OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 315–329) and the dissenting opinion of Judge Peters (R. 330–332) are reported in 106 F. (2d) 754. The opinion of the Supreme Court of Puerto Rico (R. 285–304) is reported in 53 P. R. 779, Spanish edition. The English edition has not yet appeared.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on September 27, 1939 (R. 333). The petition for certiorari was filed December 11, 1939,

and was granted January 29, 1940. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Acts Nos. 33 and 47, Laws of Puerto Rico, Special Session, 1935, pp. 418, 530–536 should be construed to confer jurisdiction on the Insular Supreme Courts in cases of violation of local laws alone.

2. Whether the complaint states a cause of action within the Insular Supreme Court's jurisdiction under Act No. 47 of proceedings instituted for violation of any Puerto Rican statute.

3. Whether Acts Nos. 33 and 47, construed to provide a means of enforcement of Section 3 of the Joint Resolution of May 1, 1900, 31 Stat. 715, 716, 48 U. S. C. Sec. 752, are invalid, the former *in toto* and the latter in part, as attempting to amend or enforce an Act of Congress.

STATUTES INVOLVED

The pertinent portions of the applicable statutes are set out in full in the Appendix to the brief. They may be summarized as follows:

Joint Resolution No. 23, approved May 1, 1900, 31 Stat. 715, in effect amended the former Organic Act of Puerto Rico, the Foraker Act of April 12, 1900, c. 191, 31 Stat. 77. Section 3 of the Joint Resolution, 48 U. S. C., Sec. 752, provides that "every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to

the ownership and control of not to exceed five hundred acres of land." This provision was specifically continued in effect by Section 39 of the present Organic Act of Puerto Rico, the Jones Act of March 2, 1917, c. 145, 39 Stat. 951, 964.

The Puerto Rico private corporation law, Article I, Section 3, paragraph 4 (Code of Commerce (1932), p. 327), provides "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred." This provision was first enacted in this form in Act No. 30, approved March 9, 1911; Pars. 407 *et seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89–90.

The "Act Establishing Quo Warranto Proceedings," approved March 1, 1902 (Rev. Stats. and Codes of Porto Rico, 1902, Pars. 779–787, pp. 282–284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319–1327, pp. 268–269), provides that if any corporation does or omits any act which amounts to a forfeiture of its corporate rights, or exercises rights not conferred by law, the Attorney General may proceed against the corporation by *quo warranto* in the appropriate district court.

Act No. 33, approved July 22, 1935 (Laws of Puerto Rico, Special Session, 1935, p. 418) provides:

> Section 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive

original jurisdiction to take cognizance of all Quo Warranto proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of Quo Warranto.

Act No. 47, approved August 7, 1935 (Laws of Puerto Rico, Special Session, 1935, pp. 530–532), provides:

> Section 2. In case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General * * * may file before any district court of Puerto Rico a petition for an information in the nature of Quo Warranto in the name of the People of Puerto Rico; or whenever any corporation, * * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General * * * may file before the Supreme Court of Puerto Rico a petition for an information in the nature of Quo Warranto in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *

The portion of this section preceding the first semicolon was derived from Rev. Stats. and Codes of Porto Rico (1902), Par. 780, p. 282. The succeeding portion was new.

STATEMENT

This action was initiated in the Supreme Court of Puerto Rico by a motion by the Attorney General of Puerto Rico for leave to file a complaint of *quo warranto* against the respondent (R. 1). Leave to file the complaint was granted (R. 35).

The amended complaint alleges (R. 44–47) that respondent was organized under the laws of Puerto Rico in 1927, that its articles of incorporation (set out at R. 5–14) provide "that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to five hundred acres only, and subject to the restriction set up in Section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America" (R. 8); that notwithstanding this restriction and in violation of the Joint Resolution respondent owns and controls some 12,188 acres of farming land; that this holding and control is contrary to the public policy of Puerto Rico as first enunciated by the Joint Resolution of May 1, 1900, and since reiterated by Acts Nos. 33 and 47 of the Second Special Session of the Puerto Rican legislature of 1935. The complaint prays the Court to adjudge respondent to have forfeited its franchise, to order its dissolution, and to impose on it the proper fine (R. 47).

The respondent filed demurrers (R. 51–59) in which it contended, among other things, that the court was without jurisdiction because the proceeding was brought with the object of charging respondents with a violation of a law of the United States, that is, the Joint Resolution of May 1, 1900, and that jurisdiction, if any, of violations of that law was in the federal courts (R. 51); that Act No. 33 of July 22, 1935, and Act No. 47 of August 7, 1935, are void as attempts to amend the Joint Resolution by conferring jurisdiction upon the Supreme Court of Puerto Rico to punish violations thereof (R. 52–53); and that the complaint is ambiguous, unintelligible, and uncertain (R. 58).

The court overruled the demurrers for reasons stated in its opinion in a similar case decided at the same time (R. 81–82). In that opinion, *People of Puerto Rico* v. *Fajardo Sugar Co.*, 51 P. R. 876 (Spanish ed.; opinion not yet reported in English but set out at R. 68–81) the court discussed at length the question of the sufficiency of the complaint, and upheld the validity of Acts No. 33 of July 22, 1935, and No. 47 of August 7, 1935, for reasons stated in its earlier opinion in the same case, also entitled *People of Puerto Rico* v. *Fajardo Sugar Co.*, 50 P. R. 163 (Spanish ed.). The opinion last referred to is set out in the Appendix to the respondent's brief in opposition in this Court, at pp. 19–37.

The respondent then filed an answer admitting that it owns and controls the lands alleged in the

complaint (R. 92), but setting up various defenses. At the trial petitioner introduced documentary evidence designed to show the necessity and justification for the 500 acre limitation (R. 130–284). Respondent introduced no evidence.

The Supreme Court of Puerto Rico entered judgment against respondent (R. 305–306). It found respondent guilty of violating the provisions of the Joint Resolution of May 1, 1900, and its own articles of incorporation by which it was restricted to the ownership and control of land not in excess of 500 acres (R. 305). It ordered the forfeiture and cancellation of the respondent's license and the dissolution and winding up of its affairs, and that respondent pay costs, including $2,000 as attorneys' fees, and a fine of $3,000 (R. 305).

The Circuit Court of Appeals reversed the judgment of the Supreme Court of Puerto Rico (R. 333). It held that Acts Nos. 33 and 47 are invalid in that they amend and enlarge the scope of the Joint Resolution of May 1, 1900, and in that they confer jurisdiction upon the Supreme Court of Puerto Rico to impose penalties for violations of that Resolution; and that even if the provisions of Act No. 47 which authorize *quo warranto* for violation of Puerto Rican statutes are separable from the provision authorizing *quo warranto* for violation of the Resolution, that violation of the articles of incorporation is not within the act and that the complaint did not allege a violation of a

Puerto Rican statute with sufficient definiteness to constitute a good charge (R. 315–329).

Judge Peters, dissenting, agreed that Act No. 33 was invalid but thought that Act No. 47 could be interpreted as imposing only a penalty for violation of corporate restrictions imposed by the Puerto Rican legislature pursuant to the mandate of the Joint Resolution, and that in any event it had separable provisions penalizing violations of local law which were sufficient to support the judgment of the Supreme Court (R. 330–332). Whether the complaint was sufficiently definite he thought to be a local question as to which the Puerto Rican court should not be reversed (R. 332).

STATEMENT OF INTEREST OF THE UNITED STATES

This proceeding was brought to effectuate the policy embodied in both federal and Puerto Rican legislation, that a corporation authorized to engage in agriculture shall not own or control more than 500 acres of land in Puerto Rico. It is as much to the interest of the United States that this prohibi-

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[1] The court also said that Puerto Rico had condoned respondent's violations of the 500-acre restriction and that it therefore should not be permitted to forfeit respondent's land (R. 328). However, Puerto Rico had neither sought nor received a decree of forfeiture of respondent's land, and the judgment of the Circuit Court of Appeals recites that it is "without prejudice to future proceedings under valid statutes" or in the federal courts based on a violation of the Joint Resolution (R. 333).

tion be enforced by the insular authorities as that it be enforced by federal authorities; indeed, the peculiarly local nature of the problem with which the 500-acre restriction deals especially qualifies the insular authorities for its enforcement.

SUMMARY OF THE ARGUMENT

The Joint Resolution of May 1900 directs that the amount of land which domestic Puerto Rican corporations authorized to engage in agriculture may own and control be restricted by their charter to 500 acres, a prohibition which was expressly continued in effect by the Organic Act of 1917. Act No. 30, approved March 9, 1911, adopted by reference the provisions of the Joint Resolution as a part of the general corporation law of Puerto Rico and the same provision was included by reference in the respondent's charter issued under the local law.

By Act of March 1, 1902, the insular district courts were given jurisdiction of *quo warranto* proceedings against any corporation which "does or omits any act" amounting "to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law," a jurisdiction broad enough in terms to extend to cases of violation of a local statute or the Joint Resolution. In 1935, the insular Supreme Court was given jurisdiction by Acts Nos. 33 and 47 of proceedings instituted for the violation of the "provisions" of (a) the Joint Resolution and Organic Act and (b) any of Puerto Rico's statutes.

I

The "provisions" of the Joint Resolution, of which Acts Nos. 33 and 47 speak, were incorporated by reference in the Puerto Rican corporation law of 1911, and the respondent's charter granted pursuant thereto. If necessary to save their validity, therefore, the "provisions" of the Joint Resolution to which Acts Nos. 33 and 47 refer, should be construed to mean the "provisions" of the local corporation law of 1911 or the charters of corporations organized thereunder.

II

In any event, the provision of Act No. 47, conferring original jurisdiction on the insular Supreme Court in proceedings instituted for violation of "any of its [Puerto Rico] statutes," is separable from the remainder of the statute. The pleadings and the proof are sufficient to bring the case within the jurisdiction of the insular Supreme Court even as so limited.

III

These questions of local law were not passed upon by the insular court and it is unnecessary for this Court to decide them independently in order to sustain the validity of Acts Nos. 33 and 47 and uphold the judgment of the insular court. For the jurisdictional statutes are valid enactments if construed to provide a means of enforcement in the

insular Supreme Court of the prohibition of the Joint Resolution. Puerto Rico was authorized to reserve the right of revocation of respondent's charter for violation of the Resolution either under its power to enact all legislation "not locally inapplicable" or pursuant to the implied authority conferred by the Joint Resolution itself.

1. The suggestion in the court below that Acts Nos. 33 and 47 unlawfully "amend" the federal law by converting a limitation on the powers of Puerto Rico into a limitation on the powers of domestic corporations is without merit. Any grant of corporate authority purporting to confer power to own and hold in excess of 500 acres would obviously be invalid and would afford no justification for the acts complained of in the *quo warranto* proceedings. The Joint Resolution, in purpose and effect, limits the power of Puerto Rican corporations.

2. Every corporate franchise is subject to the implied right of the grantor to revoke for violation of the conditions of the grant. Puerto Rico, therefore, impliedly reserved the power of revocation for violation of the prohibition imposed by the Joint Resolution unless it was without power to do so. There is no merit in the contention that Joint Resolution imposed no penalty for violation and that the reservation of a power to annul by Puerto Rico unlawfully alters or amends an Act of Congress. In failing to provide a forfeiture for violation of the Joint Resolution, Congress could not

have intended that there should be no penalty whatever. The 500-acre restriction is probably the most important condition of respondent's charter and it cannot be assumed that Congress intended a lesser consequence to attach for violation of that condition than for violation of any other. The more reasonable inference from the silence of the Joint Resolution is that Congress concluded that the power to revoke for violation of the Joint Resolution could and would be reserved by Puerto Rico pursuant to its authority to enact all legislation "not locally inapplicable."

3. Congress, however, did not fail to provide for forfeiture or violation of the Joint Resolution. The Joint Resolution itself impliedly authorized Puerto Rico to reserve a power of revocation for its violation. The implied power to revoke if the charter and condition had both been derived from one governmental authority was not lost merely because the charter was granted by Puerto Rico while the 500-acre restriction was imposed by Congress. The laws of the territory and the United States both emanate from the same sovereign. In restricting the power of corporations to own and control more than 500 acres or directing Puerto Rico to do so, the Joint Resolution itself reserved a power of revocation for violation as a condition of the charter or authorized Puerto Rico to do so. In either view, the power was intended to be exercised by Puerto Rico which granted the charter.

As the matter rests in implication, the question must be decided with reference to pertinent considerations of policy and the indications from the relevant legislation of Congress. The view that Congress intended the power of revocation to be exercised by Puerto Rico is supported by the weighty consideration that knowledge of local conditions is required for effective enforcement. The failure of Congress to reserve an express power to annul in the Joint Resolution is of particular significance in view of the express reservation of the right of forfeiture in Section 32 of the Foraker Act with respect to public and quasi-public franchises and in the Act of March 3, 1887, limiting the amount of land which corporations organized in the Territories may hold generally. The fact that Congress imposed the restriction does not negative an intention to entrust enforcement to the local government since the controls reserved over the territorial government in the Foraker Act and Organic Act of 1917 are adequate to insure local action in conformity with the intention of the federal government.

There is no principle of law which negatives an intention of Congress to authorize the territorial government to reserve the power of revocation for local enforcement. It is true that offenses against one sovereign are ordinarily tried by its own courts in proceedings instituted by its own officers. But Puerto Rico acts under the authority of the United

States, and its law-enforcing agencies are all under the control of the United States, a control which is sufficient to insure adequate enforcement of the Joint Resolution. *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, is not opposed. This Court assumed in that case, it is true, that Puerto Rico could not enforce the Sherman Act but only its own local anti-trust law. But the Sherman Act embodies a general policy of the federal government and is obviously a law of the United States within the meaning of Section 256 of the Judicial Code, and the express direction to the district attorneys to enforce the statute negatived any intention to permit any other authority to institute proceedings. In this case, Congress has been silent as to the method of enforcement and Section 256 has no application, whether the Joint Resolution be regarded as a limitation of the legislative powers of Puerto Rico or the powers of corporations directly.

The distinction between local enforcement of a federal statute and an identical local statute, it may be observed, is insufficient to support an inference that Congress intended to preserve it in this case. The Joint Resolution deals with a subject of peculiar concern to Puerto Rico, enforcement of an identical local statue would bar federal enforcement of the same prohibition, and possible failure of the local officials to enforce the Joint Resolution can be corrected by the controls reserved to the federal government over such officials in the organic act.

ARGUMENT

I

ACTS NOS. 33 AND 47, IF NECESSARY TO SUSTAIN THEIR VALIDITY, SHOULD BE CONSTRUED TO CONFER JURISDICTION ON THE INSULAR SUPREME COURT IN CASES OF VIOLATION OF LOCAL LAWS

Acts Nos. 33 and 47, should, if necessary to save their validity, be viewed as providing for the enforcement of local measures incorporating the 500-acre restriction rather than for enforcement of the Joint Resolution. The "provisions" of the Joint Resolution, of which Acts Nos. 33 and 47 speak, were incorporated by reference in the Puerto Rican corporation law of 1911, and in the respondent's charter granted pursuant thereto. If necessary to save the validity of Acts Nos. 33 and 47 the "provisions" of the Joint Resolution to which they refer, are therefore, to be construed to mean those "provisions" as adopted in the local corporation law of 1911 or in the charters of corporations organized thereunder.

1. Congress by the Joint Resolution of May 1, 1900, provided that "every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed 500 acres of land," a provision expressly continued in effect by the Organic Act of 1917 (March 2, 1917, c. 145, Sec. 39, 39 Stat. 964, 48 U. S. C., Sec. 752). Pursuant to this mandate

(*Puerto Rico* v. *Fajardo Sugar Co.*, 51 P. R. 876; R. 68, 74), the Puerto Rican legislature in 1902 provided in its general corporation law that "any corporation organized under this Code to hold real estate shall be subject to the prohibition contained in Section three of the joint resolution of the Congress of the United States of May first, nineteen hundred" (Rev. Stat. and Codes of 1902, Civil Code, Porto Rico, Title II, Section 32 (4)). In 1911 this provision was limited to agricultural corporations (Act No. 30 of March 9, 1911, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89–90). The respondent's charter in conformity with the law under which the corporation was organized, likewise provides that "the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in Section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America" (R. 8).

The provisions of the Joint Resolution were thus adopted by reference as the local law of Puerto Rico. This method of legislation, which the Congress has itself adopted on occasion (see *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 265–266) was unobjectionable. There is no merit in the suggestion of the respondent that Section 34 of the Organic Act (March 2, 1917, c. 145, Sec. 34, 39 Stat. 951, 962, 48 U. S. C. Sec. 835) forbids the incorporation

by reference of the provisions of the Joint Resolution. Apart from the fact that the Organic Act forbids adoption by reference of the prior law of *Puerto Rico,* Section 34 was not enacted until 1917, and is obviously prospective in operation.[2] Moreover, the Foraker Act (April 12, 1900, 31 Stat. 77, 83, c. 191, Sec. 31) reserved to Congress the power to annul all Puerto Rican statutes, and required that all insular laws be reported to it. Act No. 30 of March 9, 1911, was reported to Congress on April 17, 1911 (Sen. Doc. No. 11, 62d Cong., 1st Sess.), and the failure of Congress to annul the corporation laws of 1911 is itself persuasive evidence of its validity. *Clinton* v. *Englebrecht,* 13 Wall. 434, 446; *Tiaco* v. *Forbes,* 228 U. S. 549, 553.

2. The language of Acts Nos. 33 and 47 conferring jurisdiction in cases of violation of the "provisions" of the Joint Resolution may thus be construed to describe the local corporation law of 1911 which incorporated those provisions by reference. It is unnecessary to inquire whether under Section 34 of the Organic Act Puerto Rico could have adopted by reference the prohibition of the Joint Resolution in enacting Acts Nos. 33 and 47 in 1935. Those statutes are in no sense part of the corporation law of Puerto Rico and it is that law

[2] Section 34, provides: "No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as revived, amended, extended, or conferred, shall be reenacted and published at length."

which the respondents have violated. Acts Nos. 33 and 47 do not adopt the corporation law or the provisions of the Joint Resolution, but merely define the scope of the insular Supreme Court's jurisdiction.[3]

3. Acts Nos. 33 and 47 may also be construed as conferring jurisdiction on the insular Supreme Court in cases of violation of corporate charters which include by reference the prohibition contained in the "provisions" of the Joint Resolution. This, in substance, was the view expressed as respects Act No. 47 in the dissenting opinion of Judge Peters (R. 330, 331). In this connection, it may be observed, there is no basis whatever for a suggestion that Puerto Rico is without power to incorporate by reference a prohibition in a corporate charter.

II

THE COMPLAINT STATES A CAUSE OF ACTION WITHIN THE INSULAR SUPREME COURT'S JURISDICTION UNDER ACT NO. 47 OF PROCEEDINGS INSTITUTED FOR VIOLATION OF ANY PUERTO RICAN STATUTE

In any event, the provision of Act No. 47 conferring original jurisdiction on the insular Supreme Court in proceedings instituted for violation of "any of its [Puerto Rico's] statutes" is

[3] There can be no contention that Act No. 33 is invalid because in effect, but not in terms, it modifies the Act of March 1, 1902, without republishing that statute in full. See note 67 A. L. R. 564, 572–573.

separable from the remainder of the statute, and the pleadings and the proof are sufficient to bring the case within the jurisdiction of the insular Supreme Court even as so limited.

1. The dissenting Judge in the court below was of the opinion that this provision was separable from the remainder of Act No. 47 and the majority assumed this to be true for the purpose of decision. That this view is sound seems hardly open to question. The provisions respecting violations of the local statutes is in no way dependent on the remainder of the Act for its effectiveness. Cf. *Champlin Refining Co.* v. *Comm.*, 286 U. S. 210, 234; *Texoma Natural Gas Co.* v. *R. R. Comm.*, 59 F. (2d) 750, 754 (D. C. Texas). Moreover, Act No. 47 did not create a new remedy. Since 1902, the insular district courts have enjoyed jurisdiction over *quo warranto* proceedings involving "exercise of rights not conferred by law," a jurisdiction broad enough to include violations of a local statute. In enacting Act No. 47 in 1935 the Puerto Rican legislature evidently concluded that remedies for violation of local statutes could more effectively be enforced by proceedings in the insular Supreme Court (cf. *Hallowell* v. *Commons*, 239 U. S. 506, 508), and there is no reason to believe that the Puerto Rican legislature would have deemed the Supreme Court less effective in the enforcement of local statutes if jurisdiction could not also have been conferred in cases involving violations of the Organic Act.

2. The majority of the court below, however, concluded that the complaint "does not, * * * amount to an allegation that Act 30, laws of 1911, or any other local law of Puerto Rico had been violated" (R. 327). The "real issue" in this case, the majority declared, "is not whether a valid complaint could have been made under the Act No. 47, but whether one was made * * *" (R. 329). The decision below thus turns, as Judge Peters observed, "on what amounts to a question of pleading * * *" (R. 332).

The point of pleading is not well taken. The amended complaint alleged that the respondent's articles of incorporation restricted its right to hold and control land to 500 acres only (R. 44), and that the respondent, notwithstanding this restriction, owned and controlled some 12,188 acres (R. 45). These were the only material facts and the law of Puerto Rico did not require petitioner to allege anything in addition to the ultimate facts.[1] *Puerto Rico* v. *Fajardo Sugar Co.*, 51 P. R. 876 (R. 68, 69); Code of Civil Procedure of Puerto Rico (1933 ed.), Sec. 103 p. 41.

[1] A *quo warranto* proceeding for forfeiture of a corporate charter and the imposition of a penalty is a civil proceeding of common law origin and is so regarded in Puerto Rico, as in most of the States of the Union. *Santiago* v. *Feuille, Attorney General*, 16 P. R. R. 408, 412; *People of Puerto Rico* v. *Santiago*, 38 P. R. R. 627, 630; *Ames* v. *Kansas*, 111 U. S. 449, 459; High, *Extraordinary Legal Remedies*, Chap. XIII.

The majority of the court below concluded that a different rule should apply for the reason that "the Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute. Unless a case comes strictly within the statute defining its jurisdiction, it cannot proceed" (R. 328).

The question whether a violation of the local statute must be expressly pleaded is obviously one of local practice. The court below cited no case and we have found none which even remotely suggests that a violation of the local statute must be pleaded in Puerto Rico to state a case within the jurisdiction of the insular Supreme Court. In fact, in *Puerto Rico* v. *Fajardo Sugar Co.*, 51 P. R. 876; in which the jurisdiction of the insular Supreme Court under Acts Nos. 33 and 47 was challenged on grounds substantially identical to those urged in this case, the insular Supreme Court declared that "the local procedural rule" required "allegations to contain nothing but a statement of the ultimate facts on which plaintiff's right is based * * *" (R. 68, 69). In other jurisdictions it has been held that the authority of a court of limited jurisdiction is sufficiently shown by allegations of the ultimate facts without pleading the statute on which the right to recover depends. *Kolkin* v. *Gotham Sportswear, Inc.*, 10 F. Supp. 682 (S. D., N. Y.); *Dougherty* v. *Michigan Bell Telephone Co.*, 235 Mich. 416, 209 N. W. 200; cf. *United States* v. *Clarke*, 8 Pet. 436; *Southern Cal-*

fornia Edison Co. v. *Industrial Accident Comm.*, 78 Cal. App. 584, 248 Pac. 938.

Whatever may be the rule in the federal courts, where jurisdiction is limited by the Constitution, there is no reason in principle for the application to Puerto Rico of the supposed doctrine announced by the majority below. The requirement that an affirmative showing of jurisdiction in cases in inferior courts was derived at common law from the fact that no records were kept of their proceedings (cf. *Hahn* v. *Kelly*, 34 Cal. 391, 409; *Schwartz, Inc.*, v. *Burnett Pharmacy*, 112 Cal. App. 781, 787). The Supreme Court of Puerto Rico is a court of record and no useful purpose could be served on direct or collateral review by pleadings setting forth conclusions of law respecting statutes of which judicial notice may be taken.

The respondent contends that neither in the complaint nor in the proceedings before the insular Supreme Court did the petitioner proceed upon the theory that respondent had violated a local statute. Assuming this to be true, the judgment of the insular court may be sustained upon any ground supported by the facts, whether advanced below or not. The respondent is not prejudiced; it has not been denied any defense that would have been available to it if the jurisdiction of the court had been invoked on the ground of violation of the local statute. *Chicago, Rock Island & Pac. Ry. Co.* v. *Wright*, 239 U. S. 548; *Helvering* v. *Rankin*, 295

U. S. 123, 132–133; cf. *Lynch* v. *United States*, 292 U. S. 571, 587–588; *Zellerbach Paper Co.* v. *Helvering*, 293 U. S. 172, 182.

III

ACTS NOS. 33 AND 47, CONSTRUED TO PROVIDE A MEANS OF ENFORCEMENT OF THE JOINT RESOLUTION, ARE VALID

1. As suggested above, the judgment of the insular court can be sustained on the ground that the jurisdictional acts confer jurisdiction only for violations of the local corporation law of 1911 and that, in any event, the information states a cause of action for violation of the local statute within the jurisdiction expressly conferred by Act No. 47. The Government respectfully suggests, however, that neither ground should be adopted by this Court unless essential to support the judgment of the insular court.

a. The question whether Puerto Rico may provide a remedy for violations of the Organic Act and confer jurisdiction on the insular courts for its enforcement was raised by the complaint, was passed upon by the insular court and the Circuit Court of Appeals and can appropriately be decided by this Court in the present proceeding. If this question, which is especially appropriate for the decision of this Court, should not be decided, it will be necessary for this Court to decide for itself questions of statutory construction and local prac-

tice within the peculiar competence of the insular courts. *Bonet* v. *The Texas Co. (P. R.) Inc.* decided January 2, 1940, No. 132, October Term, 1939. The insular Supreme Court, it should be emphasized, did not pass upon any of the local questions involved. Moreover, a decision on one of the narrow grounds suggested would either materially restrict the intended scope of the 500-acre restriction or delay its enforcement or both.

b. A decision that Acts Nos. 33 and 47 speak only of violations of local law would, of course, prevent the exercise of jurisdiction where the acts complained of are expressly prohibited by the Joint Resolution but not by any local law. Such a restriction might well deprive the Organic Act of much of its intended scope and effect. The Joint Resolution extends to "any corporation authorized to engage in agriculture," while the prohibition in the Puerto Rico corporation law is limited to agricultural corporations. The respondent, while admitting that it was "authorized to engage in agriculture," alleged in its answer that its primary business was the manufacture of sugar, and that its "agricultural" activities were only incidental (R. 90–92). Whether such a corporation is an "agricultural" corporation within the meaning of the local law is a doubtful question and has not been decided by the insular courts. Moreover, the local law does not expressly prohibit foreign corporations from owning or controlling more than

500 acres of land. And the object of the Joint Resolutions will be defeated if its prohibitions cannot be enforced against such corporations.

c. A decision on the sufficiency of the pleadings would leave open all other questions for future decision, but would result in additional delays in the enforcement of a policy which the Congress has deemed essential to the economic well-being of Puerto Rico. The jurisdictional acts of 1935 represent the first determined effort of the Territory of Puerto Rico to enforce the mandate prescribed by Congress in the Joint Resolution of 1900. The character of the legislation is such that enforcement must await an authoritative adjudication of its validity. The corporations affected may not be expected to acquiesce until all doubt of its legality has been removed. If the holding of the court below that Puerto Rico cannot directly enforce the prohibition contained in the Joint Resolution is not disapproved, enforcement of the 500-acre restriction in cases not covered by the local statutes must be suspended until the question is presented to this Court in another case. The insular Supreme Court would presumably hold Acts Nos. 33 and 47 invalid, where a violation of the provisions of the local law could not be shown, since if it failed to do so, the court below, if it followed its present decision, would reverse. The length of the delay which may result is suggested by the facts of this case. The present complaint

was filed on January 28, 1936. Even if the judgment of the insular court is affirmed, more than four years will have passed before the decree can be carried into effect.

In our view, therefore, the central question in this case is the power of Puerto Rico to provide for the enforcement of the Joint Resolution by prescribing a remedy for violations in the insular courts. The court below held Acts Nos. 33 and 47 invalid in so far as they purported to confer such jurisdiction upon the ground, first, that each of the jurisdictional acts "changes * * * the very nature of the law that it amends and operates upon" in that it "converts" a "limitation of the Joint Resolution * * * on the powers of the legislature * * * into a limitation on the powers of corporations" (R. 325) and, second, that even if the Joint Resolution limits the power of corporations to own and control land in excess of 500 acres, Puerto Rico cannot prescribe a penalty for violation and confer jurisdiction on its courts to enforce the remedy where Congress has failed to provide any such penalty (R. 322).

2. It seems reasonably clear that the Joint Resolution has the necessary effect of limiting the respondent's corporate powers. By this complaint, Puerto Rico has challenged the respondent's authority to own and control land in excess of 500 acres. The respondent's power can be derived only from the corporation laws under which it was or-

ganized, and any power which that law should purport to confer in excess of that permitted by the Joint Resolution would plainly be invalid and could afford no justification for the acts complained of. Such has long been the theory on which suits have been entertained to restrain illegal acts of government officials. *United States* v. *Lee*, 106 U. S. 196, 218–219; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 619–620. There is no doubt that a purported grant of corporate powers which violates a provision of a state constitution affords no defense in a *quo warranto* proceeding. *People ex rel. Deneen* v. *People's Gas Light & Coke Co.*, 205 Ill. 482, 68 N. E. 950; *Attorney General ex rel. Mason* v. *Perkins*, 73 Mich. 303, 41 N. W. 426; *Kansas* v. *Lawrence Bridge Co.*, 22 Kans. 438, Field, *The Effect of an Unconstitutional Statute*, p. 19, n. 11; see id., ch. II.

There is no reason why limitation on the legislative powers of Puerto Rico should not similarly operate to restrict the powers of corporations created under its statute. As Attorney General Wickersham concluded with respect to a substantially identical provision in the organic act of the Philippine Islands: "This provision is not directory. It affects the very being of the corporation. * * *. The restrictions upon the ownership and control of lands in the Philippine Islands by corporations are absolutely determined by this legislation. It is beyond the power of the executive branches of the Governments * * * to authorize or permit corporations to own or hold lands in

, but cf. People v. Rensselaer and Saratoga Railroad Co., 15 Hand. (N.Y.) 113, 130–131.

excess of the amount so designated." 28 Op. A. G. 258, 260–261.

The limitation of the power of corporations is not solely a legal consequence of the limitation of Puerto Rico's legislative powers. That Congress expressly intended the Joint Resolution to limit the powers of corporations directly, appears from the face of the act itself. The same provision which requires that domestic corporations be restricted by their charter to ownership of 500 acres of land declares that "this provision shall be held to prevent any member of a corporation engaged in agriculture from being in anywise interested in any other corporation engaged in agriculture" and further that "corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable" (Act of May 1, 1900, No. 23, Sec. 3, 31 Stat. 715, 716). The plain meaning of these words is that the prohibition operates directly. It seems evident that Congress intended the 500-acre restriction on domestic corporations to have the same effect.

3. The respondent's charter was granted subject to the lawful condition that Puerto Rico could revoke the franchise if the respondent violated the prohibition of the Joint Resolution. As this Court observed in *Commission* v. *Havemeyer*, 296 U. S. 506, "Every such privilege is subject to termination for breach of condition, whether express or implied,

upon which the grant depends." Unless it was beyond its power to do so, therefore, it is reasonable to conclude that Puerto Rico impliedly reserved the right to terminate for breach of the condition presented by the Joint Resolution. The conclusion is not left to inference alone. In 1902, Puerto Rico conferred on the insular district courts power to decree a forfeiture of a corporate charter where any corporation "does or omits any act" amounting "to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law," an authority which by its terms is broad enough to extend to cases of violation of the Joint Resolution. Acts Nos. 33 and 47 merely transfer jurisdiction to the insular Supreme Court.

The respondent contends, and the court below held, however, that the Joint Resolution did not prescribe any consequence for its violation and that Puerto Rico cannot do so for the reason that it cannot alter or amend and hence cannot add to an Act of Congress. This position is untenable, even on the assumption that Joint Resolution did not expressly or impliedly provide any penalty for violation.

The failure of Congress to provide any penalty may evidence its determination either that there should be no penalty whatever, or that Puerto Rico had power to provide for termination under its authority to enact all legislation "not locally inap-

plicable." Cf. *Commission* v. *Havemeyer*, 296 U. S. at 516; *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 263; *Clinton* v. *Englebrecht*, 13 Wall. 343; *Hornbuckle* v. *Toombs*, 18 Wall. 648. The first alternative is plainly unacceptable. Puerto Rico may admittedly revoke corporate charters granted under its authority for violation of any conditions prescribed by the territorial government. The Congress could not have intended that a lesser consequence should attach for violation of the condition prescribed by the Joint Resolution. The Joint Resolution was passed in recognition of the fact that the agricultural land available in the territory was extremely limited and that in absence of a restriction on the amount of land which corporations could acquire, most of the land would pass into the hands of a few large corporations, leaving the mass of the local inhabitants in a condition of serfdom (R. 179–182). It is thus no exaggeration to say that the 500-acre restriction prescribed by the Joint Resolution is of more vital importance to the territory than any other condition of the corporate charters granted under its authority.

The asserted failure of Congress to provide a penalty can most reasonably be construed as a determination that the Joint Resolution could and should be enforced by the territorial government. In the *Havemeyer* case the public-service commission of Puerto Rico cancelled a franchise of a "quasi-public nature" granted by the Executive Council

of Puerto Rico in 1901. The Executive Council, created by Section 18 of the Foraker Act, was given exclusive power by that Act to grant franchises of a public or quasi-public nature (Act of April 12, 1900, c. 191, sec. 32, 31 Stat. 83–84), the power to annul or modify being reserved by the Congress. The Organic Act of 1917 transferred the authority to issue such franchises, together with the executive functions of the Council, to a public-service commission. Act of March 2, 1917, c. 145, Sec. 38, 39 Stat. 964, 48 U. S. C. Sec. 750. The legislature of Puerto Rico conferred on the commission power to annul or cancel franchises granted by the Executive Council for violation of the conditions of the franchise. The Congress at no time conferred the power of cancellation on the commission, the council, or any other insular authority. 296 U. S. 506, 516. This Court held that the action of the commission was an "assertion of the implied right to cancel for failure of holders [of franchises] to perform their undertakings" (*Id.* p. 517) and that the local legislation conferring authority to do so was "obviously not locally inapplicable" (*Id.* p. 516). In rejecting the contention that Congress, by reserving to itself the power to annul or modify franchises, intended thereby to withhold the power to annul from the insular authorities, this Court observed that "inference to the contrary is a more reasonable one and in harmony with the reasons

which underlie the reservation. Local authorities may ascertain facts and decide questions upon which depends appropriate exertion of the power much more conveniently than may the Congress" (296 U. S. at 515–516).

The decision was not rested on the ground that the executive council had an implied power to annul or that such authority was among the "executive functions" transferred to the commission. If the power of the commission had been derived from the Organic Act the local statute would have been unnecessary and the question of its validity would not have been decided. The *Havemeyer* case thus holds that the local legislature has power to authorize the cancellation of franchises for violation of conditions prescribed by an authority beyond its control.[5]

In the *Havemeyer* case, the question was whether the right of termination could be enforced by Puerto Rico or only by Congress. The inference that Congress intended the power to be exercised by the local government is an even more reasonable one in this case where the choice is between enforcement by Puerto Rico or, so respondents contend, no enforcement at all. And the fact that Congress did

[5] In this connection it should be observed that the Executive Council as originally established by the Foraker Act (Sec. 18) was composed of eleven members appointed by the President, only five of whom were required to be native Puerto Ricans. The terms and conditions of public and quasi-public franchises were thus deliberately placed beyond local control.

Cf. Attorney General v. Detroit Edison Co., 75 Fed. 65, 68-69; Detroit v. Detroit City Ry. Co., 56 Fed. 867 (C.C. E.D. Mich.), 60 Fed. 161 (per Taft, J.), reversed on other grounds, 64 Fed. 628 (C.C.A. 6th).

not leave the enactment of the 500-acre restriction to the discretion of the territorial legislature can hardly mean that Congress intended no one to enforce it. Indeed, even if Congress had reserved to itself power to annul, no inference would have arisen of an intention to withhold the power from Puerto Rico as the *Havemeyer* case holds.

4. Puerto Rico's power to enact all legislation "not locally applicable" thus includes the authority to provide for the forfeiture of respondent's charter for violation of the Joint Resolution, even if it be assumed, as respondent contends and the court below held, that the Joint Resolution did not prescribe or authorize such penalty. But this assumption is unfounded.

As previously observed, every corporate charter is subject to the right of termination for breach of its conditions. If the Congress had granted respondent a corporate charter restricting its power to own and control land in excess of 500 acres, the United States could certainly institute forfeiture proceedings for violation. Likewise if Puerto Rico had prescribed such a condition it could terminate the charter of its grantee for violation. All power to revoke for breach of this condition was not lost, however, merely because Puerto Rico granted the charter while the United States prescribed the condition. The territorial and federal laws are both "creations emanating from the same sovereignty" (*Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 264). Congress must have intended that the

power to terminate for violation of the 500-acre restriction should be reserved as fully as though the charter and condition had both derived from the same source. In restricting the power of corporations to own and control more than 500 acres or directing Puerto Rico to do so, the Joint Resolution itself reserved a power of revocation for violation as an implied condition of the charter or authorized Puerto Rico to do so. In either view, the power was intended to be exercised by Puerto Rico which granted the charter.[6]

That Puerto Rico was intended to enjoy a power of revocation is in accord with precedent (cf. *Commission* v. *Havemeyer, supra*) and is supported by substantial considerations of policy. The Congress may well have concluded that the power could best be exercised by local officials familiar with local conditions. Cf. *Commission* v. *Havemeyer*, 296 U. S. at 515–516. Moreover, as the insular Supreme Court observed with respect to the local enforcement of prohibitions against combinations in restraint of trade, " 'instances might occur where' " offenses " 'would pass unnoticed by the federal officers, or where, for some reason or other, such officers might not display the same activity and

[6] Puerto Rico has also imposed a fine in addition to declaring a forfeiture of the charter. But the fine in this case, as *quo warranto* proceedings generally, is a normal incident of the principal relief of forfeiture. *Illinois ex rel. Hunt* v. *Illinois Central R. R. Co.*, 33 Fed. 721 (C. C. N. D. Ill.) (Per Harlan, J.). The validity of the fine is not a question of importance in this case.

interest that is to be expected from the local officials.'" See *Puerto Rico* v. *Shell Co.*, 302 U. S. at 262–263. The fact that Congress placed the 500-acre restriction in the Joint Resolution beyond the control of Puerto Rico does not negative an intention to entrust enforcement to the local government. Cf. *Commission* v. *Havemeyer*, 296 U. S. 506.

The silence of the Joint Resolution as to the method of enforcement is persuasive evidence that Puerto Rico was impliedly directed, or at least authorized, to reserve the power of revocation. A proviso of Section 32 of the Foraker Act conferred exclusive authority on the executive council to grant certain franchises, required that they be reported to Congress and expressly reserved to Congress the power to annul, but the proviso related only to franchises of a public or quasi-public nature and had no application to the grant of corporation charters generally. See 26 Op. A. G. 176.[1]

[1] While the language of the proviso in Section 32 with respect to the reporting of franchises and the reservation of the power to annul was somewhat ambiguous, apparently it was always considered inapplicable to the charters of corporations not authorized to engage in a public or quasi-public utility business and there is no record of the reporting of such charters to Congress. Section 38 of the Organic Act of 1917 (39 Stat. 964) leaves no doubt that this was the intention of Congress, and in express terms requires the reporting only of the public or quasi-public franchises granted by the public service commission. It should be observed that Section 39 of the Organic Act, which expressly preserves the 500-acre restriction, required a report as to the extent of the land-holdings of corporations, partnerships, or individuals, but did not reserve the power to annul corporate charters for

The significance of the failure to reserve to Congress a power to annul in the Joint Resolution is emphasized by the fact that the Resolution was passed on May 1, 1900, the effective date of the Foraker Act, and was adopted for the very purpose of correcting what were deemed the grave defects of the original organic act (R. 179–182). Some of the provisions of the Joint Resolution, moreover, related to the granting of public or quasi-public franchises under Section 32 of the Foraker Act. The attention of Congress was clearly drawn to the reservation in Congress of power to annul in that section. The failure to include any such provision in the Joint Resolution must be construed as a deliberate determination to place responsibility for enforcement of the 500-acre restriction in the hands of the local officials.

Where the Congress has restricted the right to acquire land pursuant to a national policy and intended enforcement by the Federal Government it has made its purpose clear. The Act of March 3, 1887, c. 240, Sec. 3, 24 Stat. 476, 477, forbids the acquisition of real estate by foreign corporations and aliens who have not declared an intention to become citizens and limits to 5,000 acres the amount of land which may be held in any of the Territories of the

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disclosed violations. Indeed, as the insular Supreme Court pointed out in *Puerto Rico* v. *Fajardo Sugar Co.*, 50 P. R. 163, a provision in Section 39 as originally introduced reserving the power to Congress to legislate further on this subject was stricken. See 54 Cong. Rec. 3006, 3994–3995, 64th Cong., 2d Sess.

United States by any corporation other than those organized for certain named purposes. Section 4 of the Act expressly provides that "all property acquired, held, or owned in violation of the provisions of this act shall be forfeited to the United States, and it shall be the duty of the Attorney General to enforce every such forfeiture by bill in equity or other proper process."

Viewing the Joint Resolution as a limitation of the power of the Puerto Rican legislature, as the respondent suggests and the court below held, Puerto Rico is not only clothed with the power but charged with the duty of enforcing a forfeiture for violation of the Resolution. In this view, the Congress sought to enforce the prohibition not by direct limitation on the powers of corporations enforcible by federal officers but through the agency of the local government. Puerto Rico was under a mandate from Congress to make this restriction a matter of local concern. It cannot be supposed that its duty was discharged simply by inserting the limitation in the corporate charter. Congress must have intended that the prohibition should be enforced. And since Puerto Rico was directed to make the restriction a matter of local concern at the time of the grant of the charter, it seems reasonable to conclude that Puerto Rico was likewise charged with the responsibility of enforcement.[*]

[*] The Act of July 30, 1886, c. 818, § 1, 24 Stat. 170, provided that the territorial legislature should not pass "local or special laws" in certain enumerated cases, including the

The respondent apparently contends that there is some principle forbidding Puerto Rico to enforce the laws of Congress and hence that no intention should be imputed to Congress to permit or require Puerto Rico to reserve a power to revoke respondent's charter for violation of the Joint Resolution. To enforce the 500-acre restriction, respondent asserts, Puerto Rico must incorporate such a prohibtion in a local law. The distinction between local enforcement of the prohibition in a Puerto Rican statute and the same prohibition in the Joint Resolution, it may be ob-

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granting of privileges or franchises to corporations. The States have exercised the power to forfeit corporate charters granted in violation of similar provisions in the State constitutions. *Kansas* v. *Lawrence Bridge Co.*, 22 Kan. 438; *Attorney General* v. *Perkins*, 73 Mich. 303; *People* v. *People's Gas Light & Coke Co.*, 205 Ill. 482. It is difficult to believe that Congress intended the territories to have a lesser authority (cf. *Puerto Rico* v. *Shell Co.*, 302 U. S. at 260-261), or that Congress intended to leave to Federal officers the enforcement of a duty imposed on the territorial legislatures.

The organic act of the Philippine Islands forbids any person, company, or corporation receiving any grant, franchise or concession from the Philippine government to employ the labor of persons held in involuntary servitude and provides for the forfeiture of such grant, franchise, or concession by any court of competent jurisdiction in proceedings instituted by any officer or citizen of the Philippines. Act of Aug. 29, 1916, c. 416, § 28, 39 Stat. 555, 48 U. S. C. Sec. 1152. The grant of authority to private persons to institute forfeiture proceedings and the unusual character of the remedy presumably explain the necessity of express provisions on the subject, but the statute is evidence of the propriety of local enforcement of a Federal prohibition.

served, is very slight. Both emanate from the same sovereign and enforcement of the local law by forfeiture would necessarily bar enforcement of the federal law by the federal governments. Cf. *Puerto Rico* v. *Shell Co.*, 302 U. S. at 264–266. The powers of control over the territorial government reserved by the United States in the Foraker Act and Organic Act of 1917 are sufficient to guard against the possibility that the local officials might fail to enforce the Joint Resolution. The President was empowered to appoint the territorial Governor and Attorney General by and with the advice of the Senate and to remove them at his pleasure (Secs. 17–18). The President's powers were continued in effect by the Organic Act of March 2, 1917 (c. 145, §§ 12–13, 39 Stat. 955, 956, 48 U. S. C. Secs. 775, 778). The Justices of the Supreme Court likewise have always been appointed by the President (Act of April 12, 1900, c. 191, § 33, 31 Stat. 84; Act of March 2, 1917, c. 145, § 40, 39 Stat. 965, 48 U. S. C. § 861), could be removed in such manner as the Congress may provide (*McAllister* v. *United States*, 141 U. S. 174) and, at least, in the absence of any restriction in the organic acts, by the President. Cf. *Parsons* v. *United States*, 167 U. S. 324; *Shurtleff* v. *United States*, 189 U. S. 311. The insular Supreme Court has not manifested and unwillingness to enforce the prohibition of the Joint Resolution, but if it did adequate provision has been made for review in the federal courts. Act of Feb. 13, 1925, c. 229, § 113, 43 Stat. 936, 942, U. S. C., Tit. 48, § 864; see Act

of April 12, 1900, c. 191, § 35, 31 Stat. 85; Act of March 2, 1917, c. 145, § 42, 39 Stat. 966.

There is no occasion in this case to preserve the insubstantial distinction between local enforcement of a local and federal law embodying an identical prohibition. Congress did not intend, we submit, that Puerto Rico should be required to enact a local law embodying the 500-acre restriction as a condition of enforcement of such a prohibition by the local government. If the Joint Resolution be viewed as a limitation on the powers of the local legislature, the necessary legal effect was to limit the powers of corporations organized under the laws of Puerto Rico without further legislation. If the Resolution be viewed as directly limiting the powers of such corporation, local legislation is likewise unnecessary for local enforcement. The 500-acre restriction of the Joint Resolution was a "special or local" law "designed to meet conditions peculiar to" Puerto Rico (cf. *Sumi* v. *Young*, 300 U. S. 251, 253) and intended to be enforced by local officials in the local courts. Cf. *Pridgeon* v. *United States*, 153 U. S. 48; *Summers* v. *United States*, 231 U. S. 92; *Boyd* v. *Great Western Coal & Coke Co.*, 189 Fed. 115 (C. C. E. D. Okla.); but cf. *Canary Oil Co.* v. *Standard Asphalt Co.*, 182 Fed. 663 (C. C. D. Kan.). The silence of the Joint Resolution as to the means of enforcement is to be viewed as evidencing the purpose of Congress to entrust the exercise of the power of revocation for violation to Puerto Rico, subject to the effective controls re-

served in the Foraker Act and the Organic Act of 1917 to insure compliance with the mandate of Congress.

The respondent relies on a dictum in the *Shell* case in which this Court apparently assumed that the territorial government could not enforce the Sherman Anti-Trust Act but only its local law on the same subject. See 302 U. S. 253, at 271. The dictum has no application here. The Sherman Act embodies a general policy of the federal government and is obviously a law of the United States within the meaning of Section 256 of the Judicial Code conferring exclusive jurisdiction on the courts of the United States in proceedings for the enforcement of the federal criminal laws. The express direction in the statute that the United States District Attorney bring proceedings for its enforcement manifested a purpose to reserve enforcement to the federal officials save as otherwise expressly provided. *Paine Lumber Co.* v. *Neal*, 244 U. S. 459.

The failure of Congress to provide any means of enforcement in this case argues that responsibility was entrusted to the territory and Section 256 of the Judicial Code seems clearly inapplicable. If the Joint Resolution be viewed as a limitation of the legislative powers of Puerto Rico, the limitation in respondent's corporate charter arising as a legal consequence is no more a "law of the United States" within the meaning of Section 256 than the corporate powers granted under the authority conferred by the Organic Act. If the Joint Resolution

be viewed as a direct limitation of respondent's corporate powers, it is nonetheless not a "law of the United States" within the meaning of Section 256. For it was enacted to meet local conditions and was intended to be locally enforced. Cf. *United States* v. *Pridgeon*, 153 U. S. 48; *Summers* v. *United States*, 231 U. S. 92; *Sumi* v. *Young*, 300 U. S. 251, 253.

Section 256, it may be conceded, embodies the policy that offenses against one sovereign should be enforced in its own courts by officials responsible to it, a policy reflected in the familiar doctrine of international law that the courts of one sovereign will not enforce a penalty arising under the laws of another state. See Mr. Justice Story, dissenting in *Houston* v. *Moore*, 5 Wheat. 1, 69.[9] But this policy furnishes little guide in determining whether the prohibition in respondent's charter arising as a legal consequence of or directly imposed by the Joint Resolution constitutes a law of the United States within the meaning of that section. The federal and local officers are both "under the control

[9] Even as between the United States and the several States, however, the question is one of the intention of Congress. The State courts and officials may enforce a penalty prescribed by a law of the United States if Congress so intends (*Houston* v. *Moore*, *supra*; cf. *Tennessee* v. *Davis*, 100 U. S. 257). See Warren, Federal Criminal Laws and State Courts, 38 Har. L. Rev. 545. And generally the enforcement of the laws of the United States is not the exclusive business of the Federal courts and officers unless the Congress so provides or intends. *Robb* v. *Connolly*, 111 U. S. 624; *Missouri ex rel. St. Louis, B. & M. R. Co.* v. *Taylor*, 266 U. S. 200; *Texas & N. O. R. Co.* v. *Brotherhood*, 281 U. S. 548.

of the same sovereignty" (*Puerto Rico* v. *Shell Co.*, *supra*, at 271), a control adequate to insure effective enforcement by the local officers and courts. And, as we have said, there are substantial considerations of policy and significant indications in the Joint Resolution which are persuasive of an intention that Puerto Rico should reserve the power to annul as an implied condition of its grant.

The other cases relied on by the court below are not in point. In *Territory* v. *Lockwood*, 3 Wall. 236, the territory was held to have no power to institute *quo warranto* proceedings against a Judge of the Supreme Court of the territory appointed by the President on relation of one claiming the office for himself. The prosecution of the information was in substance an effort to regulate the method of appointment and tenure of office fixed by the organic act itself (*Id.* p. 239; See Act of May 30, 1854, c. 59, Sec. 24, 10 Stat. 277, 285. In *Ank Bay Salmon Canning Co.* v. *United States*, 300 Fed 907 (C. C. A. 9), the Alaskan fishing regulation was in conflict with the express prohibition of the organic act.[10]

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[10] The decision in *Territory* v. *Lee*, 2 Mont. 124, may be justified on the ground that the statute of the Territory providing for the forfeiture to the State of mine claims held by aliens was in conflict with the Organic Act forbidding passage of laws interfering with primary disposal of soil (Id. p. 137). See *Christianson* v. *King County*, 239 U. S. 356, 367.

In *People* v. *Torres*, 28 P. R. 783, it was held that Section 256 of the Judicial Code conferred exclusive jurisdiction on

6. There is no merit in the respondent's suggestion that Acts Nos. 33 and 47 authorize the forfeiture of corporate charters on grounds which did not exist at the time the acts complained of were committed. The jurisdictional act of 1902 authorized the forfeiture of the charter and imposition of a penalty whenever a corporation was found to have exercised powers "not conferred by law," a jurisdiction which in terms is broad enough to include acts not authorized because in violation of the Joint Resolution. Moreover, the acts complained of are not only past offenses but are continuing. *People ex rel. Maloney* v. *Pullman's Palace Car Co.*, 175 Ill. 125. Finally, the power to forfeit the charter for violation of the Joint Resolution was an implied condition of the original grant. See *supra*, pp. 30–31.

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the Federal courts of proceedings to enforce the penalty prescribed by Section 2 of the Organic Act, forbidding the importation, manufacture, sale or gift of intoxicating drink or drug, and that the insular district attorney therefore could not institute proceedings for violation in the insular courts. The decision is of doubtful soundness. Section 2 expressly provided that the prohibition and penalty could be repealed by popular vote at a general election of Puerto Rico within five years after the approval of the Organic Act and it would seem reasonably clear that Congress thus intended the prohibition and penalty to have the same force and effect as a local law and to be enforced by the local government in the local courts. Cf. *Pridgeon* v. *United States*, *supra*.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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Solicitor General.

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Special Assistant to the Attorney General.

WALTER S. SURREY,
Attorney.

MARCH 1940.

APPENDIX

Pertinent Statutes

Act of May 1, 1900, No. 23, sec. 3; 31 Stat. 716; Act of March 2, 1917, ch. 145, sec. 39; 39 Stat. 964; U. S. C., Title 48, sec. 752.

> § 752. Special provisions in franchises; corporate real-estate holdings. * * *
>
> No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in anywise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real-estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

Act No. 30 of March 9, 1911, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89–90; Private

Corporation Law, Puerto Rico, Article I, Section 3, paragraph 4 (Code of Commerce (1932)), p. 327, providing:

> SECTION 3. Every corporation has power:
> 4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.

Act of March 1, 1902, Rev. Stats. and Codes of Porto Rico, 1902, Pars. 779–787, (pp. 282–284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319–1327, pp. 268–269, providing:

> ACT ESTABLISHING QUO WARRANTO PROCEEDINGS
>
> *Be it enacted by the Legislative Assembly of Porto Rico:*
>
> (1319) SECTION 1. (779) "Quo warranto" is a writ by which the People of Porto Rico commence an action to recover an office or franchise from the person or corporation in possession of same.
>
> (1320) SEC. 2. (780) That in case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Porto Rico, or any public officer shall have done, or suffered any act which, by the provisions

of the law, works a forfeiture of his office, or any association or number of persons shall act within Porto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General or any fiscal of the respective district courts, either of his own accord or at the instance of any individual relator, may present a petition to the district court of competent jurisdiction, for leave to file an information in the nature of "quo warranto" in the name of The People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.

Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on one petition, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise.

(1321) SEC. 3. (781) On the filing of such petition, the Secretary shall issue a summons returnable in ten days, but if any defendant resides out of Porto Rico, he may be served in the same manner and with like effect as in other suits.

(1322) SEC. 4. (782) Every defendant, who shall be summoned or served with a copy of the petition as required in this act, shall be held to plead to the petition on the return day of the summons, or when served with a copy of the information at the expira-

tion of the time as may be granted by the court, or in default thereof judgment may be taken nihil dixit.

(1323) SEC. 5. (783) The court in which any information, as aforesaid, is filed, may allow the relator or any defendant such convenient time to plead, reply, or demur, as it shall deem just and reasonable.

(1324) SEC. 6. (784) In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise, and fine such person or corporation for usurping, intruding to, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: Provided, That instead of judgment of ouster from a franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense.

Whenever judgment is rendered in favor of any defendant such defendant shall recover from the relator his costs including a reasonable attorney's fee.

(1325) SEC. 7. (785) Appeals and writs of error may be taken and prosecuted in the same manner as in all other civil actions.

(1326) SEC. 8. (786) All laws, parts of laws, orders, or parts of orders contrary to this act be, and are hereby, repealed.

(1327) SEC. 9. (787) That this act shall take effect from and after its passage.

Act No. 33 of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, p. 418, providing:

An Act to Confer upon the Supreme Court of Puerto Rico Exclusive Original Jurisdiction in Quo Warranto Proceedings That the Government of Puerto Rico May Institute for Violations of the Provisions of Section 752, Title 48, United States Code, and for Other Purposes.

Be it enacted by the Legislature of Puerto Rico:

SECTION 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all Quo Warranto proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of Quo Warranto.

SECTION 2. All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 3. This Act, being of an urgent character, shall take effect immediately after its approval.

Act No. 47 of August 7, 1935, Laws of Puerto Rico, Special Session, 1935, pp. 530–532, providing:

Be it enacted by the Legislature of Puerto Rico:

SECTION 1. Section 2 of An Act entitled "An Act establishing Quo Warranto proceedings," approved March 1, 1902, is hereby amended as follows:

"SECTION 2. In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and ex-

isting under the laws of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for an information in the nature of Quo Warranto in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico, a petition for an information in the nature of Quo Warranto in the name of The People of Puerto Rico; and if, from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition in

order to try their respective rights to such office or franchise.'

"When any corporation by itself or through any other subsidiary of affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

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SUPREME COURT OF THE UNITED STATES.

No. 582.—October Term, 1939.

The People of Puerto Rico, Petitioner, *vs.* Rubert Hermanos, Inc. } On Writ of Certiorari to the Circuit Court of Appeals for the First Circuit.

[March 25, 1940.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The question here in controversy is a matter of great importance to Puerto Rico and involves the power of its legislature to enforce Congressional policies affecting the Island. We therefore brought the case here on a writ of certiorari, 309 U. S. —, to review a decision of the Circuit Court of Appeals for the First Circuit. 106 F. (2d) 754. That court had reversed the judgment of the Supreme Court of Puerto Rico, 53 P. R. 779 (Spanish edition) sustaining a proceeding in *quo warranto* brought against respondent.

The proceeding was initiated in the Supreme Court of Puerto Rico under jurisdiction conferred upon it by the local legislature. The substance of two measures, enacted in 1935, and set out below, authorized the Government of Puerto Rico to bring a *quo warranto* proceeding in its Supreme Court against any corporation violating federal law.[1] Accordingly, the Attorney General of the Island

[1] Act No. 33 of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, p. 418, providing:

Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

Section 2.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 3.—This Act, being of an urgent character, shall take effect immediately after its approval.

Act No. 47 of August 7, 1935, Laws of Puerto Rico, Special Session, 1935, pp. 530-32, providing:

Section 1.—Section 2 of An Act entitled "An Act establishing Quo Warranto proceedings", approved March 1, 1902, is hereby amended as follows:

"Section 2.—In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws

brought the present suit against respondent, a corporation organized in 1925 under Puerto Rico's corporation law. The gravamen of the suit was alleged defiance by respondent of the Congressional restriction imposed upon "every corporation authorized to engage in agriculture . . . to the ownership and control of not to exceed five hundred acres of land." This restriction, according to the complaint, embodied "the public policy of the People of Puerto Rico" first declared by Congress in its Joint Resolution of May 1, 1900, 31 Stat. 715, supplementing the Foraker Act of April 12, 1900, 31 Stat. 77.[2] This limitation upon the corporate ownership of land was continued when Congress in 1917 revised the constitutional framework of Puerto Rico's government in what is the existing Organic Act, § 39 of the Act of March 2, 1917, 39 Stat. 964 (48 U. S. C. § 752).

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of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise."

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings, institute [*sic*] in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

[2] § 3 of the Joint Resolution provides:

No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not

The present controversy derives from the fact that Congress affixed no direct consequences to disobedience of its land policy for Puerto Rico. The main issue presented here is whether Puerto Rico's Legislative Assembly has power to graft such consequences upon the Congressional prohibition. This was the issue as the Supreme Court of Puerto Rico conceived it, and we are not disposed too deal with it differently. It was suggested by the dissenting judge in the Court of Appeals that the Supreme Court's judgment may be supported by construing the 1935 legislation as a means of enforcing the local land policy—identic, to be sure, with that declared by Congress—embodied in the 1911 corporation law of Puerto Rico. To do so, however, would take us into niceties of pleading and of local law which were not canvassed by the insular court. Such a course would be peculiarly gratuitous when the issue which the local court in fact decided is easily resolved.

In the setting of the traditional relation between the broad outlines designed by Congress for the government of territories and the powers of local legislatures to move freely within those outlines, the difficulties conjured up against the view taken by the Puerto Rican court rapidly evaporate. The objections urged against it illustrate vividly the power of subtle argument to give an appearance of difficulty to what is relatively simple. The breadth of local autonomy reposed by Congress in the Legislative Assembly was elucidated too recently and too thoroughly in *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, to call for repetition here. Suffice it to say that the opinion in that case underlined the fullness of scope which Congress gave to Puerto Rico when it provided by § 37 of the Organic Act of 1917 that "the legislative authority shall extend to all matters of a legislative character not locally inapplicable . . . ." 39 Stat. 964, 48 U. S. C. § 821. Drawing on the practice of Congress in its

to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

Whether the restriction operates directly as a limitation upon the powers of the corporation or merely as a limitation upon the legislative Assembly's power to confer corporate privileges, its effect is to render corporate land ownership in excess of the prescribed acreage unlawful. See the opinion of Attorney General Wickersham, 28 Op. A. G. 258, 260-261.

treatment of territories throughout our history, and assimilating that practice into the Puerto Rican situation, the Court concluded that "The grant of legislative power in respect of local matters contained in § 32 of the Foraker Act and continued in force by § 37 of the Organic Act of 1917 is as broad and comprehensive as language could make it." 302 U. S. at 261.

Surely nothing more immediately touches the local concern of Puerto Rico than legislation giving effect to the Congressional restriction on corporate land holdings. This policy was born of the special needs of a congested population largely dependent upon the land for its livelihood.[3] It was enunciated as soon as Congress became responsible for the welfare of the Island's people, was retained against vigorous attempts to modify it,[4] and was reaffirmed when Congress enlarged Puerto Rico's powers of self-government. Surely Congress meant its action to have significance beyond mere empty words. To treat the absence of a specific remedy for violation of the restriction as an implied bar against local enforcement measures is to impute to Congress a dog-in-the-manger attitude bordering on disingenuousness. We refuse to believe that Congress was bent on the elaborate futility of a *brutum fulmen*. What was said in another context, *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548, 569, is apposite here: "The definite prohibition which Congress inserted in the Act cannot therefore be overridden in the view that Congress intended it to be ignored. As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated." The suggestion that enforcement might come only through *quo warranto* proceedings by the Attorney General of the United States is equally feckless.

A much more rational explanation, consistent with the organic relation between Congress and the local government, is at hand. As the ultimate legislative guardian of the Island's welfare, Congress confined the legislature's discretion within the limits of the five

[3] See Gayer, Homan and James, The Sugar Economy of Puerto Rico, pp. 97-132; Diffie, Porto Rico: A Broken Pledge, pp. 45-88; Fleagle, Social Problems in Porto Rico, pp. 19-27; Hanson, Planning Problems and Activities in Puerto Rico (Report to National Resources Committee, 1936). Compare Clark, etc., Porto Rico and Its Problems, pp. 495-500, 628 *et seq.*

[4] See H. R. 23,000, 61st Cong.; H. Rep. No. 750, 61st Cong., 2d Sess.; S. Rep. No. 920, 61st Cong., 3d Sess.; 45 Cong. Rec. 6861 *et seq.*, 7220 *et seq.*, 7584 *et seq.*, 7604 *et seq.*, 8177 *et seq.*; 46 Cong. Rec. 2644.

hundred-acre restriction. How this policy was to be realized was for Puerto Rico to say. "Local authorities may ascertain facts and decide questions upon which depends appropriate exertion of the power much more conveniently than may the Congress." *Commissioner* v. *Havemeyer*, 296 U. S. 506, 515-16.

It is admitted, as indeed in view of the *Shell* case it could not be denied, that the remedy here pursued would have been available to the Legislative Assembly if that body had adopted the Congressional policy in a substantive statute of its own. But respondent contends that the same result cannot be achieved by investing the insular courts with jurisdiction directly to enforce the Congressional policy. Such useless indirection is compelled neither by the Organic Act nor by any general consideration underlying the distribution of power between Congress and the insular legislature. So long as the Legislative Assembly acts within the framework which Congress has set up it merely avails itself of the power conferred in § 37 of the Organic Act. It has done so here.

There remains for consideration an objection based on § 256 of the Judicial Code (28 U. S. C. § 371). That section vests in "the courts of the United States . . . exclusive of the courts of the several States" jurisdiction of all suits "for penalties and forfeitures incurred under the laws of the United States." Whether a law passed by Congress is a "law of the United States" depends on the meaning given to that phrase by its context. A law for the District of Columbia, though enacted by Congress, was held to be not a "law of the United States" within the meaning of § 250 of the Judicial Code. *Am. Security Co.* v. *Dist. of Columbia*, 224 U. S. 491. Likewise, we hold that § 37 of the Organic Act is not one of "the laws of the United States" within the meaning of § 256. Section 37 is peculiarly concerned with local policies calling for local enforcement from which local courts should not be excluded by a statutory provision plainly designed for the protection of policies having general application throughout the United States.

Other objections urged at the bar and in respondent's brief do not call for particular mention. On the only questions now before us, we think the Supreme Court of Puerto Rico acted within the

scope of power validly conferred upon it by the Legislative Assembly.[5] The judgment of the Circuit Court of Appeals must therefore be

Reversed.

Mr. Justice McREYNOLDS did not participate in the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[5] The imposition of a fine by the Supreme Court of Puerto Rico, as a part of the power to grant relief ancillary to the main proceeding for forfeiture of the corporate privileges, was within the scope of authority validly conferred upon it by the 1935 legislation. Compare State of Illinois v. Illinois Cent. R. Co., 33 Fed. 721. See High, Extraordinary Legal Remedies, §§ 745-762.